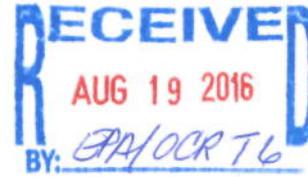




August 19, 2016

Lilian Dorka, Interim Director
Office of Civil Rights
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1201-A
Washington, DC 20460



Re: Title VI Civil Rights Complaint and Petition for Relief or Sanction – Alabama Department of Environmental Management Permitting of Arrowhead Landfill in Perry County, AL (EPA OCR File No. 12R-13-R4): Intimidation and/or Retaliation

Dear Interim Director Dorka,

Complainants in EPA OCR File No. 12 R-13-R4 submit this letter to request that the Office of Civil Rights (“OCR”) investigate whether the Alabama Department of Environmental Management (“ADEM”), directly and through the actions of Green Group Holdings (“Green Group”), the owner of Arrowhead Landfill, have engaged in and failed to protect Complainants from retaliation and intimidation, which is prohibited by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d–2000d-7 and EPA regulations, 40 C.F.R. § 7.100. Complainants request that OCR accept this supplementary complaint, conduct an investigation to determine whether ADEM violated Title VI and its regulations, and if a violation is found, initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to ADEM.

Attached please find Complainants’ letter of March 25, 2016 to ADEM describing intimidation, threats, and coercion directed at those who have complained of civil rights violations resulting from ADEM’s modification and reissuance of permits for Arrowhead Landfill (EPA File No. 12R-13-R4). Letter from Matthew Baca & Marianne Engelman Lado, Earthjustice, to Lance LeFleur, ADEM (Mar. 25, 2016), attached hereto as Ex. 1. The letter describes a number of retaliatory and intimidating actions, including correspondence from attorneys representing Green Group threatening litigation, intimidating behavior by Green Group employees in the vicinity of the Landfill, and activities by Green Group that have disturbed the New Hope Church Cemetery, where family members of at least one of the Complainants are buried. *Id.* Complainants also provided information about Green Group’s activities in the Cemetery in our March 8, 2016 filing with OCR. On April 8, 2016, ADEM responded, disclaiming any responsibility and determining only that “the permit holder, Perry County Associates, LLC (PCA), is in compliance with the conditions set forth in said permit.” Letter from Lance R. LeFluer [sic], ADEM, to Matthew R. Boca [sic] & Marianne Engelman Lado, Earthjustice (Apr. 8, 2016), attached hereto as Ex. 2. At the time Complainants wrote to ADEM seeking assistance and protection from retaliation, Green Group had threatened a defamation lawsuit against

members of the community for speaking out about the adverse impact and perceived adverse impacts of the Landfill. On April 6th, 2016, Green Group filed suit, initiating what is known as a “strategic lawsuit against public participation,” or SLAPP suit, against four of the Complainants (b) (6), (b) (7)(C), all complainants in EPA OCR File No. 01R-12-R4 and residents of Uniontown, Alabama who have raised concerns about the impact of Arrowhead Landfill on their community. Complaint, *Green Grp. Holdings v. Schaeffer*, No. 2:16-cv-00145 (S.D. Ala. filed Apr. 6, 2016), attached hereto as Ex. 3. A SLAPP suit is intended to silence, censor and intimidate critics by burdening them with a lawsuit and threatening them with damages that they cannot afford. Unfortunately, Alabama is one of a minority of states where SLAPP suits are not explicitly prohibited by law to protect people such as the Complainants who are exercising their right to free speech. *See, e.g.*, Ga. Code Ann. § 9-11-11.1. The claims alleged are wholly meritless and unfounded, and Green Group cannot hope to collect a judgment for the millions of dollars requested against these four individuals. Yet, as you are no doubt aware, these sorts of menacing threats have a chilling effect on community members and interfere with the exercise of their rights under Title VI of the Civil Rights Act and the United States Constitution, including the First Amendment. Two days after Green Group filed its SLAPP suit, ADEM sent Complainants the letter disclaiming responsibility for protecting the exercise of Complainants’ rights. Ex. 2.

We bring this intimidating conduct to your attention for two reasons. First, this is further evidence of ADEM’s inability or unwillingness to address civil rights complaints and protect the right of members of the public to raise such concerns safely. Second, retaliation and intimidation are prohibited by Title VI and EPA regulations, 40 C.F.R. § 7100, and we ask that OCR enforce the law.

The importance of enforcing the anti-retaliation provision of EPA’s Title VI regulations cannot be overstated. As an Administrative Law Judge at the U.S. Department of Education stated in an opinion upholding the Department of Education’s jurisdiction over a retaliation claim asserted by a complainant exercising rights under Title IX,

If OCR were unable to offer broad protection to individuals who exercise their rights..., the effectiveness of the statute and the regulations would be severely hampered. Individuals would be discouraged from engaging in any protest activity aimed at encouraging voluntary compliance with the law. Potential complainants might be intimidated into withholding information from OCR or providing false information under the threat of retaliation. OCR’s enforcement process would be compromised and a full and fair inquiry into any alleged discriminatory activity could be hampered.

In re Capistrano Unified Sch. Dist., 75 Ed. Law Rep. 1396, 1420 (Dep’t of Educ. Apr. 30, 1992).

I. EPA REGULATIONS PROHIBIT RETALIATORY AND INTIMIDATING CONDUCT.

EPA's Title VI regulations explicitly prohibit retaliation and intimidation:

Intimidation and retaliation prohibited

No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group, either:

(a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this part, or

(b) Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.

40 C.F.R. § 7.100. Moreover, Title VI and its regulations establish that ADEM cannot engage in prohibited activities such as retaliation and intimidation "directly or through contractual, licensing, or other arrangements." *Id.* § 7.35(a).

EPA also requires grant recipients, including ADEM, to acknowledge that they have "an affirmative obligation to implement effective Title VI compliance programs." U.S. Env'tl. Prot. Agency, Civil Rights Obligations at 2 (Jan. 25, 2013), available at http://www.envirolawyer.com/Civil_Rights_Obligations.pdf. Any effective compliance program must include measures to identify, prevent, and resolve interference with the exercise of rights under Title VI and EPA regulations. Recipients such as ADEM must further "be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how [they] [are] meeting [their] Title VI obligations." *Id.*

As the Title VI Legal Manual published by the Department of Justice ("DOJ") sets forth, "[a] complainant may bring a retaliation claim under Title VI or under a Title VI regulation that prohibits retaliation." DOJ, Title VI Legal Manual § VII(C) (Sept. 1998), available at <https://www.justice.gov/crt/title-vi-legal-manual#Retaliation> (last updated Aug. 6, 2015).

A *prima facie* case of prohibited retaliation or intimidation includes the following four elements:

(1) that [the complainant] engaged in a protected activity, (2) that the recipient knew of the complainant's protected activity, (3) that the recipient took some sort of adverse action against the complainant, and (4) that there was a causal connection between the complainant's protected activity and the recipient's adverse actions.

Id. (citing *Davis v. Halpern*, 768 F. Supp. 968, 985 (E.D.N.Y. 1991)) (Defendant's summary judgment motion to dismiss Title VI retaliation claim was denied because plaintiff established evidence of prima facie case).

In this case, Complainants filed a complaint under Title VI of the Civil Rights Act of 1964 and EPA regulations, a protected activity pursuant to 40 C.F.R. § 7.100 (a) & (b). Following acceptance of the Complaint, Complainants have assisted in the investigation by providing declarations and supplementary material. All of these steps constitute protected activity.

There is no doubt that ADEM had actual knowledge of the protected activity. *See* Letter from Lance R. LeFleur, ADEM, to Rafael DeLeon, OCR (July 19, 2012), attached hereto as Ex. 4 (acknowledging receipt of OCR's notice of Acceptance of Administrative Complaint and responding).

Moreover, ADEM has directly and through the actions of Green Group, which ADEM permits, engaged in acts of retaliation and intimidation against Complainants. These acts of retaliation and intimidation are ongoing. *See infra* at § II. ADEM has also utterly failed to implement an effective Title VI compliance program that protects the exercise of rights under Title VI and its regulations.

Finally, there is clearly a causal connection between the assertion of rights by Complainants and the acts of intimidation by ADEM and Green Group. The remainder of this letter will summarize the acts of retaliation and intimidation faced by Complainants as well as ADEM's responsibility for those acts based on its failure to maintain a program that protects Complainants from interference in the exercise of their rights.

II. RETALIATORY AND INTIMIDATING CONDUCT.

Any analysis of whether particular actions or behaviors are retaliatory, intimidating, or coercive must start with the context. As the Supreme Court stated in *Burlington Northern and Santa Fe Railway Co. v. White*, 548 U.S. 53, 69 (2006), "the significance of any given act of retaliation will often depend upon the particular circumstances. Context matters."¹ In Uniontown, that means ADEM's actions must be considered in the context of race relations and the legacy of segregation and discrimination.

¹ Writing about the standard to be applied in an employment case, in particular, the Court stated further, "[t]he real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed." *Id.* (quoting *Oncale v. Sundowner Offshore Servs., Inc.* 523 U.S. 75, 81–82 (1998)).

Uniontown, Alabama, is a town of approximately 2,400 people in the Black Belt of Alabama. U.S. Census Bureau, American Fact Finder, <http://factfinder.census.gov/> [Search for “Uniontown, Alabama”]. Historically, segregation was mandated and enforced by law, and the town’s political leadership was explicit in its support of segregation and white supremacy.² Many people living in Uniontown today, including Complainant (b) (6), (b) (7)(C), are the descendants of sharecroppers and themselves grew up on white-owned Plantations. See Decl. of (b) (6), (b) (7)(C) at ¶ 5, EPA OCR File No. 01R-12-R4 (Feb. 2015), attached hereto as Ex. 5. Though the formal trappings of *de jure* segregation are gone and Uniontown is now approximately 90% African American, U.S. Census Bureau, American Fact Finder, <http://factfinder.census.gov/> [Search for “Uniontown, Alabama”, then click on “Demographic and Housing Estimates”], the vestiges of discrimination have never been fully uprooted and the fear of retaliation for speaking up, ingrained from decades of occupying a secondary status, remains. See Ex. 5 at ¶ 49 (stating belief that the decisions to place Arrowhead Landfill and coal ash in the community were influenced by the thought that “people would be afraid to speak up”). As an article on a recent effort to overcome the legacy of “social, political and economic distress” described the current state of race relations in Uniontown,

For the most part, Uniontown’s black and white residents live separately. White children do not attend the local schools in Uniontown. Instead, white parents travel many miles each day to transport their children to private schools or to public schools in surrounding cities. The churches are also equally divided along racial lines. Power is also segregated, with economic power held by the white community and political power held by the black community. Whites and blacks even remain separated after their death, since they are not buried in the same cemeteries. This separation makes coalition building across racial lines extremely difficult.

Kmcguane, *Building Community: The Uniontown Story*, Participedia (first posted Aug. 22, 2011, 8:04 PM), <http://participedia.net/en/cases/building-community-uniontown-story>. Though African Americans are the majority in town and hold political office, Arrowhead Landfill is majority white-owned and controlled, see *Leadership*, Green Group, <http://www.gghcorp.com/about/leadership/> (last visited Aug. 15, 2016), as are the few other major employers in town, such as the catfish processing plant, *Teamwork Makes It All Come*

² See, e.g., Letter from Thomas R. Long, Mayor of Uniontown, to George Wallace, Governor-Elect of Alabama (Sept. 27, 1962), available at <http://digital.archives.alabama.gov/cdm/ref/collection/voices/id/2972> (commending the Governor-Elect for defending segregation against federal intervention, a position Mayor Long called “universally popular here”).

Together, Harvest Select Catfish and Seafood, <http://www.harvestselect.com/#!our-staff/cdw6> (last visited July 29, 2016). Race continues to be a salient feature in everyday life, and distrust between Blacks and Whites is a barrier to community-based collaboration. See Kmcguane, *supra* (describing the need to build trust across racial barriers). ADEM's own policies and practices – including its failure to create and implement an effective Title VI compliance program, – coupled with the specific actions taken by its permittee, Green Group, take place in the context of a community where it continues to take extraordinary courage to raise civil rights complaints and challenge authority.

A. **SLAPP Suit**

On November 19, 2015, Michael D. Smith of Smith & Staggs, the firm representing Green Group Holdings, sent a letter to four of the Complainants, who at the time served as officers of Black Belt Citizens Fighting for Health and Justice (“Black Belt Citizens”), threatening suit for posting critical commentary about Arrowhead Landfill on its Facebook page and website. See Letter from Michael D. Smith, Smith & Staggs, LLP, to (b) (6), (b) (7)(C) Black Belt Citizens Fighting for Health & Justice (Nov. 19, 2015), attached hereto as Ex. 6. At the time, Complainants had representation on the civil rights complaint but no defense counsel or counsel on retainer. On March 10, 2016, Mr. Smith again threatened the four Complainants with litigation, demanding that they “**immediately delete**” particular posts and “**affirmatively state**” on Facebook “that they have been deleted and that the references to Green Group Holdings and Arrowhead Landfill in all deleted posts were false and misleading.” Letter from Michael D. Smith, Smith & Staggs, LLP, to (b) (6), (b) (7)(C) , Black Belt Citizens Fighting for Health & Justice (Mar. 10, 2016) (emphasis in original), attached hereto as Ex. 7. Notably, the challenged Facebook posts include concerns raised in Complainants’ civil rights complaint and subsequent submissions. See *id.* (raising concerns, for example, about the impacts of multiple sources of pollution affecting residents, water runoff leaving the Landfill site, impacts of the Landfill on property values, and the impact of air pollution). On March 15, Complainant (b) (6), (b) (7)(C) informed Mr. Smith that she and (b) (6), (b) (7)(C) were consulting with attorneys regarding the request. See Email from (b) (6), (b) (7)(C) to Michael Smith, Re: Black Belt Citizens Fighting for Health & Justice (Mar. 15, 2016), attached hereto as Ex. 8. Apparently believing that Green Group could bully community members into submission, on March 17th Mr. Smith emailed (b) (6), (b) (7)(C) , pressuring her “to reach at least an agreement in principle” by the following day. Email from Michael D. Smith, Smith & Staggs, LLP, to (b) (6), (b) (7)(C) (Mar. 17, 2016), attached hereto as Ex. 9. In an abundance of caution, some postings were removed from the Facebook page. Then, after additional emailing, Mr. Smith continued his direct exchange with (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) , suggesting that they might be subject to punitive damages³ and demanding that they “disclose the identity and contact information for the person or persons” responsible for posts on the Facebook page, and, in the alternative “the names and contact information for all persons having authority to post to your Facebook account...” Letter from Michael D. Smith, Smith & Staggs, LLP, to (b) (6), (b) (7)(C) at 1–2 (Mar. 16, 2016), attached hereto as Ex. 10 (emphasis in original). On March 25, 2016, William M. Dawson sent Mr. Smith a response on behalf of the four Complainants, explaining that some matters had been removed from the Facebook page “as a showing of good faith” and noting, “[The four Complainants] are hardly ideal targets for a damage action, and the inference can be made that any litigation would have other purposes.” Letter from William M. Dawson, Dawson Law, LLC, to Michael D. Smith, Smith & Staggs, LLP (Mar. 25, 2016), attached hereto as Ex. 11. In response, Mr. Smith sent a draft Retraction, Press Release and Settlement Agreement and asked that the four Complainants respond within two days. See Letter from Michael D. Smith, Smith & Staggs, LLP, to William M. Dawson, Dawson Law, LLC (Mar. 30, 2016), with attachments (Draft Press Release and Retraction and General Release and Settlement Agreement), attached hereto as Ex. 12. The Draft Press Release and Retraction included the text for the four Complainants to sign stating that they acted “recklessly,” that they knew claims appearing on the Facebook page of Black Belt Citizens were false, and that “Green Group has been an excellent corporate citizen since purchasing the landfill in December of 2011,” among other things. *Id.* (Press Release and Retraction at 1).

The 11-page General Release and Settlement Agreement included, among other things:

- A waiver provision, requiring the four Complainants to “irrevocably and unconditionally release Plaintiffs (and all of Plaintiffs’ past and present officers, directors, employees, attorneys and agents; successors, assigns, shareholders, members, owners and insurers; and all parent subsidiary and affiliate corporations, and regulators, including but not limited to USEPA, ADEM, TDEC and the U.S. Army Corps of Engineers) from any and all causes of action, demands or claims, known or unknown, accrued or unaccrued, arising out of or related in any manner whatsoever to Arrowhead Landfill...,” an unconscionable provision that might have had a direct effect on the ability of (b) (6), (b) (7)(C) to continue as Complainants in the civil rights proceeding against ADEM;

³ The letter states, “I assume that the conversations you are having with your counsel revolve around the posting of a repudiation of these prior posts as being ‘false and misleading’. I believe that you will find that such is required under the law in order to avoid the imposition of punitive damages but your own counsel can better provide advice on that issue.” Ex. 10.

- A provision requiring the disclosure of “all persons (and their contact information) having, whether now or at any time in the past, authority to post” on the Facebook page of Black Belt Citizens;
- Other provisions restricting who would have authority to post as an administrator on the Facebook page;
- A provision providing “free access” for Green Group and Howling Coyote, a wholly-owned subsidiary of Green Group, to “all of the financial books and records of Black Belt [Citizens]”;
- A provision requiring the four Complainants to “submit to an examination” by Green Group and Howling Coyote, on topics even going beyond the challenged statements but also “[i]nteraction and communication with various environmental groups” and “[i]nteraction and communication” with various other groups;
- A provision requiring the four Complainants to “withdraw as a party from the Title VI claim filed against ADEM in connection with the renewal and modification of Permit 53-03 relating to Arrowhead Landfill, now pending before EPA’s Office of Civil Rights”; and
- Stipulation to the truth of various facts, including that they have “no evidence of any environmental harm done to the Uniontown and/or Perry County communities as a result of waste disposal operations....”

Id. (General Release and Settlement Agreement at ¶¶ 2–3). This General Release and Settlement Agreement was explicitly, by its terms, an effort by Green Group to intimidate Complainants and interfere with the exercise of rights under Title VI, EPA regulations, and the First Amendment.

Green Group and Howling Coyote then brought suit on April 5, 2016 against the four Complainants alleging that various statements on the website and Facebook page of Black Belt Citizens and spoken during radio interviews were defamatory. *See* Ex. 3. Green Group sought millions of dollars in both compensatory and punitive damages. *See id.* at ¶ 42. At the direction of the Magistrate Judge, Green Group filed an amended complaint on April 22, 2016, modifying allegations of federal jurisdiction. Amended Complaint, *Green Grp. Holdings v. Schaeffer* (Apr. 22, 2016), attached hereto as Ex. 13. Fortunately, *pro bono* counsel stepped forward to represent the four Complainants and on June 2, 2016, filed a Motion to Dismiss Pursuant to Rule 12(b)(6). *See* Memorandum in Support of Defendants’ Motion to Dismiss Pursuant to Rule 12(b)(6), *Green Grp. Holdings v. Schaeffer* (June 2, 2016), attached hereto as Ex. 14. As the Memorandum in Support of Defendants’ Motion to Dismiss states, Complainants’ assertions “were well-founded and not actionable for multiple overlapping reasons under state and federal law. They thus fall far short of the standard for defamation. *Id.* at 28 (emphasis in original). The motion to dismiss is pending before the U.S. District Court in the Southern District of Alabama.

astounding, Green Group acknowledges that while the graveyard is “adjacent to the landfill entrance, it is on land Green Group does not own or control.” Letter from Ernest Kaufmann, President & CEO, Green Group Holdings, LLC, to Black Belt Citizens Fighting for Health and Justice (June 22, 2015), at 1, *available at* <http://app.adem.alabama.gov/eFile/Download.ashx?lib=Land&docId=004144181>, attached hereto as Ex. 20. Ms. Calhoun was in disbelief:

When I saw what they had done to the Cemetery with the bulldozer, it was like a knife through my heart. To me, this is even worse than having to live as a sharecropper and the affronts and indignities of the past – we have fought for generations for our property, and now this is a new way to try to show us that we are not respected or fully citizens.

Ex. 15 at ¶ 17. (b) (6), (b) (7) and other members of the community raised their concerns with the Landfill, but, rather than addressing their genuine concerns, the Landfill instead tried to control the reaction.

Worse, even as members of the community complained, the Landfill continued its activities at the Cemetery, cutting a wide swath through the brambles with heavy machinery and taking other liberties with markers and on or around unmarked graves. *See* Photographs: Ruts on Cemetery Grounds as Seen from County Rd. 1, taken by Marianne Engelman Lado (March 30, 2016), attached hereto as Exs. 21–22; Photograph: Cleared Land on Cemetery Grounds, taken by Marianne Engelman Lado (Mar. 30, 2016), attached hereto as Ex. 23; Photograph: Cleared Land with Marked Graves Near Treeline, taken by Marianne Engelman Lado (Mar. 30, 2016), attached hereto as Ex. 24; Photograph: Marked Graves, taken by Marianne Engelman Lado (Mar. 30, 2016), attached hereto as Ex. 25; Photograph: Cleared Land on Cemetery Looking East with Landfill Visible, taken by Marianne Engelman Lado (Mar. 30, 2016), attached hereto as Ex. 26; Photograph: Marked Graves at Cemetery, taken by Marianne Engelman Lado (Mar. 30, 2016), attached hereto as Ex. 27; Photographs: Two Marked Graves with Evidence of new Formation of Rocks and Bricks Holding Marker, taken by Marianne Engelman Lado (Mar. 30, 2016), attached hereto as Exs. 28–31; Photograph: Probably Unmarked Grave on Cleared Ground, taken by Marianne Engelman Lado (Mar. 30, 2016), attached hereto as Ex. 32; Photographs: Two Stones Dated from the 1920s, taken by Marianne Engelman Lado (Mar. 30, 2016), attached hereto as Exs. 33–34; Photograph: Remnants on Grounds Probably from New Hope Church, taken by Marianne Engelman Lado (Mar. 30, 2016), attached hereto as Ex. 35.

Green Group conducted a community meeting – with Mr. Smith present as counsel for Green Group and community members without legal representation. *See* Ex. 15 at ¶ 12; Letter from

Michael D. Smith, Smith & Staggs, LLP, to (b) (6), (b) (7)(C) at 1 (Nov. 18, 2015) (referring to the “community meeting”), attached hereto as Ex. 36. Green Group attempted to quell controversy by offering to create a non-profit cemetery foundation composed of its allies in the community, purportedly designed to take title to and determine future control over the Cemetery. Green Group then attempted to coerce community members, who at that point were still not represented by counsel, to agree to Green Group’s plans and objectives for the Cemetery. When Complainant (b) (6), (b) (7)(C) was not placated by Green Group’s presentation and its proposals for the future of the Cemetery, Mr. Smith sent her a dismissive letter accusing her of “serving the agendas of strangers from outside Perry County,” *id.*, a tactic reminiscent of the claim of opponents during the height of the Civil Rights Movement that protesters were fronting for “outside agitators.” *See generally* Keith M. Finley, Southern Opposition to Civil Rights in the United States Senate: A Tactical and Ideological Analysis, 1938-1965, at 63, 243, 275 (Aug. 2003) (unpublished Ph.D. dissertation, La. St. Univ., available at http://etd.lsu.edu/docs/available/etd-0702103-151627/unrestricted/Finley_dis.pdf.)

In response to Complainants’ letter dated March 25, 2016, notifying ADEM of the actions by the Landfill affecting the Cemetery, including the use of heavy equipment through Cemetery grounds and possibly disturbing and/or covering up graves in the process, Ex. 1 at 1–2, ADEM took no action, stating only “[s]ince the cemetery, and now its surrounding area, are outside the regulated landfill property, any actions by [the Landfill] or others at the cemetery are outside the purview of this ADEM permit.” Ex. 2.

Since April 8, 2016, Green Group has persisted in its activities in the Cemetery over the objections of Complainant (b) (6), (b) (7)(C) and others with family members buried in the Cemetery. In late June, Complainants observed Green Group utilizing heavy equipment to install a large wooden fence at the Cemetery. Portions of the fence have been installed directly on top of plots where Complainant (b) (6), (b) (7)(C) believes the graves of her family members are located, and the fence, generally, is located in and through areas that Complainants consider to be Cemetery grounds. *See* Photographs: Cleared Entrance to Cemetery with New Fence and (b) (6), (b) (7)(C) Standing Where She Believes Her Family Members May be Buried, taken by (b) (6), (b) (7)(C) (July 12, 2016), attached hereto as Exs. 37–38. When (b) (6), (b) (7)(C) visited the Cemetery to observe the construction of the fence, Green Group representatives or affiliates confronted her and otherwise took actions she perceived to be intimidating.

C. Other Acts of Intimidation

In addition to the acts specified above, Complainants ask that OCR speak to them about their experiences at the Cemetery and in the vicinity of the Landfill, where they believe they and others have been monitored and followed by Landfill personnel.

III. ADEM'S RESPONSIBILITY FOR RETALIATORY AND INTIMIDATING CONDUCT.

As a recipient of federal funds, ADEM must ensure that its programs do not unlawfully discriminate in violation of Title VI. ADEM cannot use "criteria or methods of administering its program ... which have the effect of subjecting individuals to discrimination because of their race..." 40 C.F.R. § 7.35(b). ADEM is also prohibited from engaging in retaliation or intimidation against individuals or groups so as to "interfer[e] with any right or privilege" conferred by the Civil Rights Act. *Id.* § 7.100. Moreover, Title VI and its regulations establish that ADEM cannot engage in prohibited activities "directly or through contractual, licensing, or other arrangements."⁴ *Id.* § 7.35(a). Finally, ADEM has "an affirmative obligation to implement effective Title VI compliance programs." U.S. Env'tl. Prot. Agency, Civil Rights Obligations, *supra*.

ADEM has failed on all counts. ADEM has failed to ensure that its programs do not unlawfully discriminate. ADEM has failed to implement policies that protect the exercise of rights guaranteed by federal law from retaliation or intimidation. And they have no meaningful program in place to ensure that permittees, including Green Group Holdings, do not interfere with the exercise of citizens' rights under Title VI. Having approved a succession of permits allowing for the operation of Arrowhead Landfill in a low-income community of color and adjacent to a historic African American cemetery, ADEM has taken no subsequent action to address the impacts on the Cemetery from the Landfill's odor, the placement of one or more monitors on site, or recent activities by the Landfill – on property that the Landfill acknowledges it does not own or control. ADEM's response to Complainants' letter raising concerns about retaliation – that the activities of Green Group are "outside the purview of this ADEM permit" – are an admission of its failure.⁵ Ex. 2.

⁴ Similarly, the provision of the Fair Housing Act prohibiting interference with the exercise of rights, coercion or intimidation, 42 U.S.C. § 3617, broadly applies "'to reach all practices which have the effect of interfering with rights under the fair housing laws.'" *Cooper v. W. & S. Fin. Grp., Inc.*, 847 F. Supp. 2d 1031, 1037 (S.D. Ohio 2012) (quoting *Mich. Prot. & Advocacy Serv., Inc. v. Babin*, 18 F.3d 337, 347 (6th Cir. 1994)). In *Cooper*, plaintiffs' retaliation claim survived a motion to dismiss over arguments by defendant that it had a right to engage in the contested behavior, that plaintiffs had failed to allege that it had directly affected the availability of housing to the plaintiffs, and that it had never been in a position to directly disrupt plaintiffs' rights. 847 F. Supp. 2d at 1034, 1039.

⁵ ADEM's response to Complainants' letter demonstrates the gross inadequacy of ADEM's policies and practices to address violations of Title VI. For community members subject to discriminatory actions in Alabama, ADEM's current policies and practices, *see* ADEM, ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process, *available at* <http://www.adem.alabama.gov/inside/files/CivilRightsProcess.pdf>, appear to be an attempt to avoid liability rather than elements of a meaningful civil rights compliance and enforcement program.

ADEM cannot shirk its responsibility under Title VI and EPA's implementing regulations by hiding behind a conveniently restrictive interpretation of its authority under state law. *See* U.S. Const., art. VI, § 2 (“[The] Constitution, and the Laws of the United States ... shall be the supreme Law of the Land.”). ADEM is obligated to protect citizens exercising rights under federal law. Furthermore, under state law, ADEM has authority to attach conditions to landfill permits to protect the exercise of civil rights.⁶

Section 22-27-12 of the Code of Alabama includes broad grants of power to ADEM with respect to the regulation of solid waste facilities including the power to adopt rules to establish requirements and restrictions for the management of solid waste, to issue permits that specify terms and conditions, and to take other actions not inconsistent with law that it deems “necessary and proper” to carry out its responsibilities:

Powers of department.

The department may do the following:

- (1) Adopt rules to implement this article.
- (2) Adopt rules establishing requirements and restrictions for the management of solid waste. . . . The rules may include factors such as the characteristics of the solid waste, the potential for contamination of soils or ground and surface waters, the design and operation of management facilities, the financial capabilities of the applicant, soil and geological considerations, human health, and other environmental considerations. . . . The department may condition the issuance of a permit for any solid waste management or materials recovery facility upon the facility being consistent with applicable rules as are necessary to carry out the intent of this article and the department's responsibilities under this article. . . .
- (3) Issue permits, notices, and orders, specify the terms and conditions of permits or notices, conduct inspections, require that records be established and maintained, direct the abatement of unauthorized dumps or other public nuisances involving solid waste. . . .
- (6) Enter upon, during reasonable hours, all solid waste management and materials recovery facilities owned and operated by persons subject to this chapter to inspect, investigate, obtain samples, monitor. . . .
- (9) Promulgate rules to ban certain wastes from landfilling or incineration in order to protect the public health and environment. . . .

⁶ The discussion of ADEM's authority is relevant both to this complaint regarding acts of intimidation and retaliation and, also, to the underlying allegations that gave rise to EPA OCR File No. 12R-13-R4.

(11) Do any and all other actions not inconsistent with this article or other state law which it deems necessary and proper for the effective enforcement of this article and the rules promulgated pursuant to it.

Ala. Code § 22-27-12. Notably, the Code grants ADEM broad power to adopt rules to implement the Solid Wastes and Recyclable Materials Management Act, *id.* § 22-27-12(1), and specifically grants ADEM the power to establish rules that “may include factors such as ... human health, and other environmental considerations,” making it clear that ADEM has authority to impose conditions to protect public health and the environment. *Id.* § 22-27-12(2). The Code also requires ADEM to “exercise such regulatory control over the management of solid wastes as may be necessary to enforce the requirements of the department,” and grants ADEM authority to “adopt such rules and regulations as may be needed to meet the requirements of this article.” *Id.* § 22-27-7. This delegation of authority is further provided in § 22-27-9, which states that ADEM “may exercise the regulatory authority over the permitting and operation of solid waste management facilities necessary to enforce the requirement and purposes of this article.” *Id.* § 22-27-9(a).

Beyond rulemaking, the Code also grants ADEM the power to “issue permits” and “specify the terms and conditions of permits” and makes clear that ADEM has authority to take “any and all other actions” necessary and proper to enforce the Act, so long as they are not inconsistent with other law. *Id.* §§ 22-27-12 (3), (11).⁷

ADEM cannot deny that the scope of the “requirements and purpose” of the Solid Wastes and Recyclable Materials Management Act includes the protection of public health and the environment.⁸

⁷ Notably, ADEM has significant discretion to add to or modify requirements of an individual permit so long as such modifications are not inconsistent with generally applicable rules. For example, although ADEM’s hydrogeology standards include requirements for separation distances between cells or liners and the ground water level, ADEM retains discretion to require additional buffers “as it may deem appropriate with respect to a particular site”; to “specify greater separation distances, a liner(s), or a leachate collection system, or combination of the above to protect the groundwater”; and to “allow engineering controls to remove, divert, drain or otherwise modify zones of saturation” when geological and hydrological data indicate. Ala. Admin. Code r. 335-13-4-.11(2). Moreover, the Code further authorizes ADEM to impose “additional requirements” for operating and maintaining a municipal solid waste landfill “as deemed necessary, to comply with the Act and this Division.” *Id.* r. 335-13-4.22(3). Clearly, ADEM retains discretionary authority in the permitting process under state law.

⁸ See *Ex parte Lauderdale Cnty.*, 565 So. 2d 623, 627 (Ala. 1990) (“[O]ne of the purposes of the [Solid Wastes Disposal] Act is to protect the public health. . . .”); *State v. Clayton*, 492 So. 2d 665, 667 (Ala. Crim. App. 1986) (“The solid waste disposal regulations are aimed at preventing public nuisances, public health hazards, and the despoliation of the environment. . . .”) (citations omitted).

CONCLUSION

In conclusion, Complainants ask that OCR investigate ADEM for directly and through the actions of Green Group Holdings, engaging in and failing to protect Complainants from prohibited retaliation and intimidation. Complainants ask, further, that OCR meet with Complainants, both to gather additional information and, also, to discuss any potential resolution of this complaint. Given the events currently taking place in Uniontown and ADEM's failure to provide any mechanism for protecting their rights, Complainants request that OCR expedite its review of this complaint.

Sincerely,



Marianne Engelman Lado
Senior Staff Attorney
Earthjustice
48 Wall Street, 19th Floor
New York, NY 10005
T: 212.845.7393
F: 212.918.1556

cc.

Daria Neal
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General
Washington, D.C. 20530

Lance LeFleur
Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

EXHIBIT 1



March 25, 2016

Lance LeFleur
Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

P.O. Box 301463
Montgomery, AL 36130-1463

RE: **Arrowhead Landfill unlawful intimidation**

Dear Mr. LeFleur:

We write to notify you of intimidation, threats, and coercion directed at those who have complained of civil rights violations resulting from ADEM's modification and reissuance of permits for Arrowhead Landfill (EPA File No. 12R-13-R4). These threats and attempts to intimidate complainants are unacceptable and illegal. We urge ADEM to take immediate action to require Arrowhead Landfill, an ADEM permittee, to refrain from future retaliatory and threatening behavior.

Attached, please find three letters from attorneys representing Arrowhead Landfill to the officers of the Black Belt Citizens Fighting for Health and Justice. *See* Attachments 1–3. In addition to these threatening letters, we are aware of Landfill staff following and observing community members and scientists near the Landfill in a way perceived as threatening.

As you can see from the letters, addressed to residents of Uniontown, the Landfill is threatening legal action for community members' speaking out about the threats and injuries endured and perceived in the town. The claims of defamation are wholly unfounded. Yet even unfounded threats of legal action can constitute an attempt to scare community members away from exercising their rights to combat environmental and health harms they believe are related to the Landfill and other environmental stressors in Uniontown.

We also want to bring your attention to actions by the Landfill that affect New Hope Church Cemetery, a historic African American cemetery adjacent to the Landfill. The Landfill's operations have had adverse impacts on this site, from the effects of odor on community members visiting loved ones who are interred in the Cemetery to the location of several monitoring wells on the site. Most recently, however, the Landfill made the unilateral decision to disrupt the Cemetery by using a bulldozer to uproot trees, push up mounds of dirt, and widen a one-lane path into a 30-40 foot roadway through the cemetery grounds, possibly

covering up some of the graves in the process, *see* Attachments 4–6, and then attempted to quell controversy in the wake of these activities by creating a non-profit cemetery foundation, composed exclusively of their allies in the community, purportedly designed to take title to and determine future control over the Cemetery. Further, their counsel attempted to coerce other descendants—who were not represented by counsel—to agree to the Landfill’s plans and objectives for the Cemetery. Likewise, ADEM recently approved a modification of the Landfill’s permit, as you are aware, to exclude the New Hope Cemetery and to move monitoring wells that were (likely unlawfully) in that site, which it believes it owns (a position that is strongly contested). *See* Attachment 7.

As you are no doubt aware, as a recipient of federal funds, ADEM must ensure that its programs do not unlawfully discriminate in violation of Title VI of the Civil Rights Act. Effective January 23, 2013, EPA has required that grant recipients, including ADEM, acknowledge the following grant condition:

In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

U.S. Env’tl. Prot. Agency, Civil Rights Obligations (Jan. 25, 2013). To comply with the mandate of Title VI, its implementing regulations, and this assurance, ADEM must take steps to ensure that its permittees do not interfere with the ongoing Title VI complaint process and do not attempt to intimidate, threaten, or coerce those who believe they have been affected by the Landfill and who are exercising their rights.

As you are also likely aware, it is unlawful for anyone—either a recipient of federal funds or anyone else—to “intimidate, threaten, coerce, or discriminate against any individual or group” for opposing discriminatory conduct or for participating in a Title VI process. 40 C.F.R. § 7.100. We are concerned that the Landfill’s intimidation tactics may have already risen to that level, and we urge ADEM to take immediate action to prevent its permittee from continuing on that unlawful course.

Moreover, ADEM cannot use “criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race...,” 40 C.F.R. § 7.35(b), and we also urge ADEM to take immediate action to prevent further activities by the Landfill in New Hope Church Cemetery and to protect and preserve this sacred site.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Baca', with a stylized flourish at the end.

Matthew R. Baca
Associate Attorney
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705 Second Ave, Suite 203
Seattle, WA 98104-1711
T: 206.343.7340 ext. 1021
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Marianne Engelman Lado
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Attachment 1

MICHAEL D. SMITH
CLAY STAGGS
AMANDA MULKEY
JAIME W. CONGER



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(205) 409-3144

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701 22ND AVENUE, SUITE 1
TUSCALOOSA, AL 35401

WRITER'S EMAIL:
MSMITH@SMITHSTAGGS.COM

November 19, 2015

(b) (6), (b) (7)(C), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7)(C) individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7)(C), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7) individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

Re: *Black Belt Citizens Fighting for Health & Justice*
Facebook Page

(b) (6), (b)

As you are all aware, I represent Green Group Holdings, LLC ("Green Group Holdings"), the ultimate owner of Arrowhead Landfill in Perry County, Alabama.

It has come to our attention that over the past several weeks, the Facebook page administered by *Black Belt Citizens Fighting for Health & Justice* has published the following statements regarding Arrowhead Landfill:

November 18, 2015: Continued onslaught, pollution, exploitation, & crimes against our Black community; unpermitted discharges leaving from ***toxic Arrowhead Landfill*** & destroying property values; increasing health threats, stress, & violence; these oppressive actions cause poverty & discrimination. The ***Arrowhead Landfill is also desecrating the nearby Black cemetery***. Esther Calhoun, President of Black Belt Citizens, says "I feel like I'm in prison, we're ***suffocated by toxic pollution & extreme poverty***. Where are my freedoms? This is an environmental injustice & it's happening in Uniontown & everywhere" (Emphasis added.)

November 13, 2015: Uniontown residents continue to be upset over the actions of the Arrowhead Landfill, over the past 3 days there has been another unpermitted

November 19, 2015

Page 2

(illegal) discharge leaving *Green Group Holdings toxic landfill*. This has been occurring for years and ADEM has never enforced their permit limits to stop this problem. The majority of the *residents around the landfill are worried about their water, air, property values, families' health, and the nearby sacred cemetery that is also being desecrated by the landfill*. (Emphasis added.)

November 13, 2015: Black Belt Citizens demand no more coal ash in Uniontown! Black Belt Citizens demand ADEM and EPA enforce their laws to prevent further discrimination against the community. *The landfill is poisoning our homes and destroying our Black cemetery (sic)*. THIS IS ENVIRONMENTAL INJUSTICE! Where's our justice? (Emphasis added.)

November 2, 2015: Coal ash landfills, like *Arrowhead Landfill, continue to leak toxins into rivers, streams, and groundwater*, potentially affecting the quality of drinking water. This toxic waste effects everyone, please watch this short film about the problems at Arrowhead. (Emphasis added.)

October 23, 2015: Arrowhead Landfill and its owners, *Green Group Holdings, neglects laws, peoples' rights, and our culture. First, corruption and unlawful actions get the landfill here*. Then, 4 million tons of coal ash and garbage from 33 states. Now, Arrowhead landfill and *Green Group Holdings are trespassing and desecrating a black cemetery*. Black lives matter! Black ancestors matter! (Emphasis added.)

We have likewise discovered that a similar statement can be found on your website "Projects" page at <http://blackbeltcitizens.wix.com/blackbeltcitizens#!projects/c21kz> where the following statement regarding Arrowhead Landfill is made:

Arrowhead Landfill, located on south Perry County Road 1 near Uniontown, Alabama, *poses a serious health and environmental threat* to our area. *Built on an unsuitable site* over our aquifer, it now contains almost 4 million tons of *toxic coal ash* from the Kingston TN spill. Stormwater run-off and *deliberate discharges from the landfill reveal high levels of arsenic* which, along with *toxic dust and noxious odors*, are impacting residents, their livestock, and the garden produce on which they depend.

These four posts and statement, and particularly the highlighted language, are published without any factual basis. As I am sure you can understand, we view the above posts and statement to be false, defamatory, misleading and damaging. We have referred this matter to our corporate

(b) (6), (b) (7)(C)

November 19, 2015

Page 3

attorneys for review and to evaluate the appropriate legal action to be taken in response to your unfounded and reckless statements.

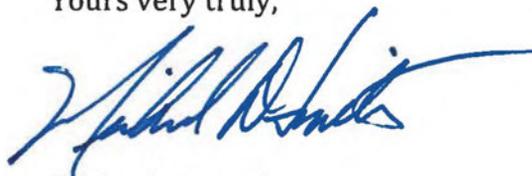
Given the nature of the posting via electronic media, we would request that you immediately delete these four posts from your Facebook page and affirmatively state that the references to Green Group Holdings and Arrowhead Landfill in your prior posts were false and misleading. We also request that you immediately cease and desist from making false, erroneous statements about Green Group Holdings and Arrowhead Landfill.

It is imperative we get an understanding from you and your affiliates that you (and they) will comply with this most reasonable request. Please confirm this to me in writing, within five (5) calendar days of the date of this letter. Otherwise, I shall forward the fact of your non-compliance to our corporate attorneys in order that they might consider your actions (or failure to act) as they evaluate the courses of action best suited to protect my clients' interests.

Further, consider yourselves put on **notice to preserve all documents** as broadly defined in Rule 34 of the *Federal Rules of Civil Procedure*, including all electronically stored documents and emails in your possession, custody or control, regardless of origin, author or source, relating to, arising from or disseminating the allegations made by you and quoted above or evidencing any cooperation, coordination and/or collaboration.

Please give this matter your immediate attention and feel free to contact me should you have any questions about anything contained herein. Your reply should be directed to me at the address in the above letterhead.

Yours very truly,



Michael D. Smith

MDS/

Attachment 2

MICHAEL D. SMITH
CLAY STAGGS
AMANDA MULKEY
JAIME W. CONGER



TELEPHONE
(205) 409-3140
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(205) 409-3144

SMITH & STAGGS, LLP

701 22ND AVENUE, SUITE 1
TUSCALOOSA, AL 35401

WRITER'S EMAIL:
MSMITH@SMITHSTAGGS.COM

March 10, 2016

(b) (6), (b) (7)(C), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7)(C), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7)(C), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

Re: *Black Belt Citizens Fighting for Health & Justice*
Facebook Page

(b) (6), (b) (7)(C):

As you are all aware, I represent Green Group Holdings, LLC ("Green Group Holdings"), the ultimate owner of Arrowhead Landfill in Perry County, Alabama.

On November 19, 2015, I notified you that several statements had appeared on the Facebook page administered by *Black Belt Citizens Fighting for Health & Justice*, which were regarded as publication of libelous statements. We further advised you that the publication of those statements had been made without any factual basis and were considered to be to be false, defamatory, misleading and damaging. We went on to demand that you immediately delete these four posts from your Facebook page and affirmatively state that the references to Green Group Holdings and Arrowhead Landfill in your prior posts were false and misleading. We also demanded that you immediately cease and desist from making false, erroneous statements about Green Group Holdings and Arrowhead Landfill.

Since that time, you have continued to make such libelous, false, defamatory, misleading and damaging statements. Examples of those statements follow:

November 20, 2015:

Pictures of the New Hope Cemetery, neighbor of Arrowhead Landfill. The photos

(b) (6), (b) (7)(C)

March 10, 2016

Page 2

are of possible trespass and recent bulldozing done by the landfill, some of the graves are unable to be located, family members are upset over their **sacred space being violated, damaged, & desecrated.**

Arrowhead Landfill is on the site of an older plantation. The New Hope Cemetery is the final resting place of former workers, indentured servants, and slaves of the plantation.

Recent actions by the landfill and improper enforcement from the state constantly remind Uniontown's residents of their past life full of violence, hate, & oppression. (Emphasis added.)

December 5, 2015:

"We are tired of being taken advantage of in this community." said Uniontown resident (b) (6), (b) (7)(C), who is a member of the group Black Belt Citizens Fighting for Health and Justice. "The living around here can't rest because of the **toxic material** from the coal ash **leaking into creeks and contaminating the environment**, and the deceased can't rest because of **desecration of their resting place.**" (Emphasis added.)

January 11, 2016:

Multiple pollution sources impact residents including Arrowhead Landfill which stores over 4 million tons of toxic coal ash. This **landfill is experiencing unpermitted amounts of water runoff leaving its site and entering neighboring property.** Also, the landfill may have committed **illegal trespass & desecration of an adjacent Black cemetery.** The owners of this landfill, **Green Group Holdings, own and operate many extreme landfills around the US.**

...

This event is created to unite citizens across Perry County and Uniontown, Alabama's Black Belt, and the Southeast US to accomplish the following:

...

- Identify communities' needs against environmental injustices including **illegal pollution**, coal ash, corporate interests for **toxic landfills**, and "**extreme energy waste sites**" (Emphasis added.)

January 14, 2016:

Join us this Saturday in Uniontown for Building Bridges for Justice as we focus on the **toxic, 4 million tons of coal ash** sitting in the Arrowhead Landfill. The **landfill's pollution problems are influencing the decrease of property values while increasing health concerns.** This extremely large landfill owned by Green Group Holdings has been reportedly **trespassing and desecrating a nearby Black**

(b) (6), (b) (7)(C)

March 10, 2016

Page 3

Cemetery. These impacts are very discriminatory and we feel our civil rights are being violated by environmental racism at all levels. (Emphasis added.)

February 25, 2016:

"Its a landfill, its a tall mountain of coal ash and it has affected us. **It affected our everyday life.** It really has done a lot to our freedom. **Its another impact of slavery.** ...Cause we are in a black residence, things change? And you can't walk outside. And **you can not breathe. I mean, you are in like prison.** I mean, its like **all your freedom is gone.**

As a black woman, our voices are not heard. EPA hasn't listened and ADEM has not listened. Whether you are white or black, rich or poor, it should still matter and **we all should have the right to clean air and clean water.** I want to see EPA do their job."

Powerful words from our (b) (6), (b) (7)(C). (Emphasis added.)

March 1, 2016:

The **toxic Arrowhead Landfill** continues to hurt/violate/oppress the community with the **desecration of the adjacent cemetery, the constant run-off of contaminated water, the bad odors and smells, and the depression of property value.**

Watch this small video by Black Belt Citizens member (b) (6), (b) (7) as he records run-off at **toxic Arrowhead.** Black Belt Citizens stand with all communities impacted by toxic coal ash and extreme energy wastes. We stand united with all communities suffering from oppressive and discriminatory policies and practices. We stand with all people who fight for health and justice. (Emphasis added.)

This is your final notice. Demand is hereby made that you **immediately delete** the four posts from your Facebook page which were the subject of our November 19, 2015 letter - as well as those Facebook posts listed above - and **affirmatively state** on that page that they have been deleted and that the references to Green Group Holdings and Arrowhead Landfill in all deleted posts were false and misleading. We also request that you immediately cease and desist from making further libelous, false, erroneous and damaging statements about Green Group Holdings and Arrowhead Landfill. It is imperative we get a clear understanding from you and your affiliates that you (and they) will comply with this most reasonable request. Please confirm this to me in writing, within five (5) calendar days of the date of this letter. If you fail to comply with this demand, our clients will take the course of action best suited to protect their interests.

Further, consider yourselves put again have been placed on **notice to preserve all documents** as broadly defined in Rule 34 of the *Federal Rules of Civil Procedure*, including all electronically stored documents and emails in your possession, custody or control, regardless of

(b) (6), (b) (7)(C)

March 10, 2016

Page 4

origin, author or source, relating to, arising from or disseminating the allegations made by you and quoted above or evidencing any cooperation, coordination and/or collaboration.

Please give this matter your immediate attention and feel free to contact me should you have any questions about anything contained herein. Your reply should be directed to me at the street or electronic address in the above letterhead.

Yours very truly,



Michael D. Smith

MDS/

Attachment 3

MICHAEL D. SMITH
CLAY STAGGS
AMANDA MULKEY
JAIME W. CONGER



TELEPHONE
(205) 409-3140
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(205) 409-3144

SMITH & STAGGS, LLP
701 22ND AVENUE, SUITE 1
TUSCALOOSA, AL 35401

WRITER'S EMAIL:
MSMITH@SMITHSTAGGS.COM

March 16, 2016

(b) (6), (b) (7)(C), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

Re: *Black Belt Citizens Fighting for Health & Justice
Facebook Page*

Dear (b) (6), (b) (7)(C),

Thank you for your email of March 15, 2016. My client and I appreciate your acknowledgement (1) of the nature of the posts that have been taken down and (2) that they were written and posted by others. While it seems you could have taken this step following my letter in November of last year and also put an end to the practice of providing others your platform to publish such falsehoods, we are pleased that you are taking that step now. If you are also speaking for (b) (6), (b) (7)(C), please confirm that. Your confirming email should include an affirmative statement that you have specific authority from each of them to make that representation or that you have asked that they send me an email similar to your own.

I assume that the conversations you are having with your counsel revolve around the posting of a repudiation of these prior posts as being "false and misleading". I believe that you will find that such is required under the law in order to avoid the imposition of punitive damages but your own counsel can better provide advice on that issue. The five (5) days allowed in my letter of March 10, 2016, has expired, I will expect a repudiation or retraction to be published on or before Friday, March 18, 2016.

While speaking to your attorney, you should raise one additional point that has arisen as a result of your disclosure that the "... posts in question were **written and posted** on our Facebook page **without the prior knowledge or approval of the four officers** of Black Belt Citizens Fighting for Health and Justice." Demand is also made upon you to disclose the identity and contact information for the person or persons who did write and post the libelous material you have now removed from your Facebook page. You and your organization would have been required to authorize such a person to have access to your Facebook account in a manner to make

(b) (6), (b) (7)(C)

March 16, 2016

Page 2

those posts. We will be making a similar demand of them as has been made on you. If you are unaware of the identity of the specific individual writing and posting this libelous material please provide the names and contact information for **all** persons having authority to post to your Facebook account on behalf of your organization or with whom you have communicated regarding your Facebook account. This information is the sort of thing we will be asking for in discovery in the litigation that will surely ensue if you fail to comply. Again, please provide this information by Friday of this week.

Pending confirmation that the repudiation or retraction has been satisfactorily made and that the same result has been obtained from those acting on your behalf, please continue to consider yourselves **on notice to preserve all documents** as broadly defined in Rule 34 of the *Federal Rules of Civil Procedure*, including all electronically stored documents and emails in your possession, custody or control, regardless of origin, author or source, relating to, arising from or disseminating the allegations made by you and quoted above or evidencing any cooperation, coordination and/or collaboration.

There is one additional thing I would ask of you beyond the demands already made and this time it is simply a request. I would ask that you remove the block you have made against Arrowhead Landfill posting comments on your Facebook page. We would not abuse this show of good will on your part and will limit our posts to factual information which we can document. This will allow a vehicle for an exchange of information on the various issues that may arise concerning the landfill and its operations. Hopefully that will mark the beginning of an improved relationship leading to a free exchange of information between us. My client is willing to do that if you and your organization are.

Please give this matter your immediate attention and feel free to contact me should you have any questions about anything contained herein. Your reply should be directed to me at the street or electronic address in the above letterhead.

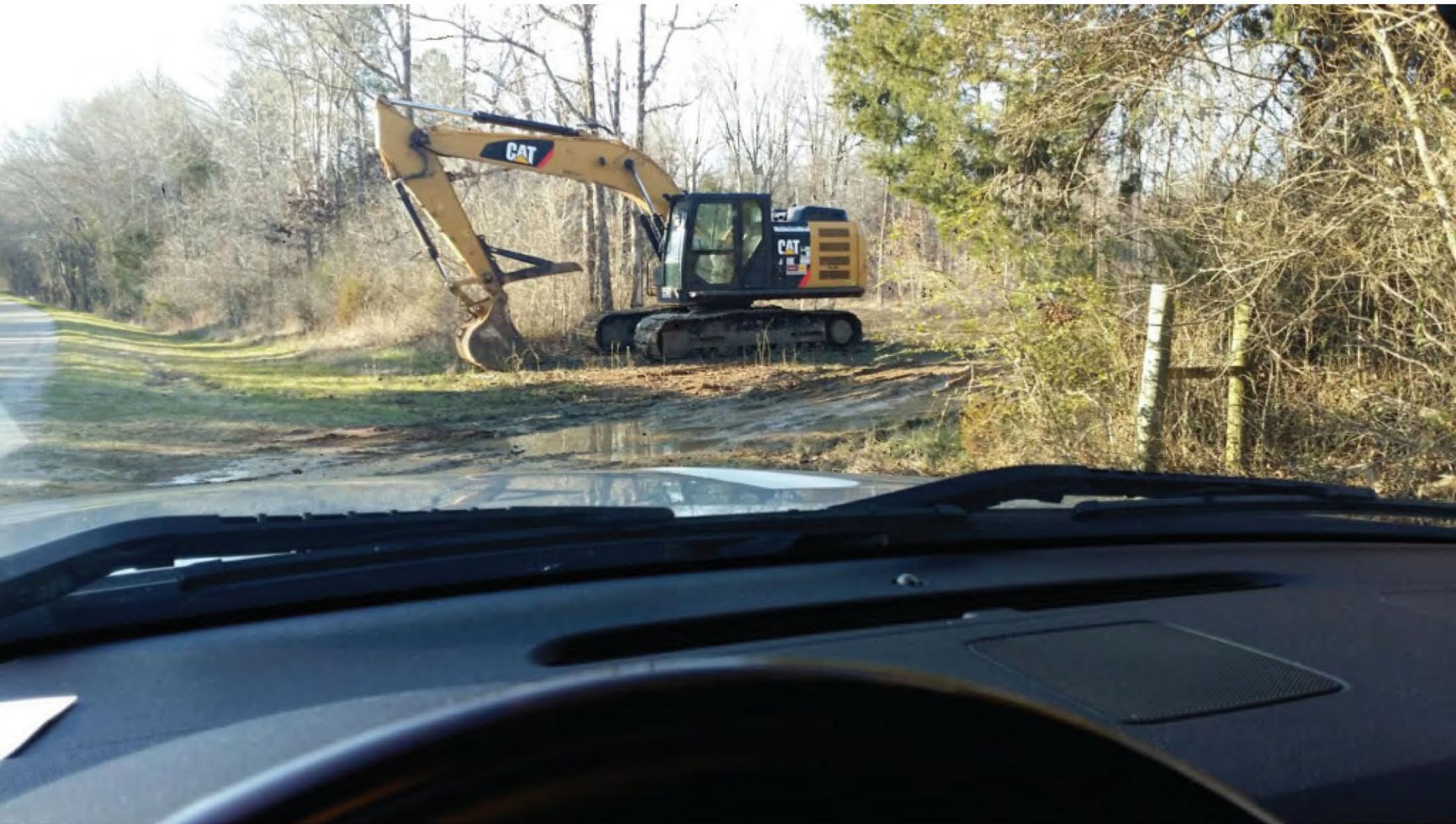
Yours very truly,



Michael D. Smith

MDS/

Attachment 4



Attachment 5



Attachment 6

MICHAEL D. SMITH
CLAY STAGGS
AMANDA MULKEY
JAIME W. CONGER



TELEPHONE
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(205) 409-3144

SMITH & STAGGS, LLP

701 22ND AVENUE, SUITE 1
TUSCALOOSA, AL 35401

WRITER'S EMAIL:
MSMITH@SMITHSTAGGS.COM

November 18, 2015

(b) (6), (b) (7)(C)

(via email)

Re: New Hope Cemetery

Dear (b) (6), (b) (7)(C),

I did not make any assumption regarding any ties between your Black Belt Citizens group and the cemetery. I do however know that you, your sister, (b) (6), (b) (7)(C) are the apparent officers and leaders of that group. Each of you was present at (or in the case of (b) (6), (b) (7)(C) invited to) our last meeting and participated with some vigor. Facebook requires that organized groups with pages designate their administrators and only those administrators are allowed to post on behalf of the organization. My comments were directed toward you as individuals, not your group. Mr. Kaufmann took the time to come over and all present engaged in a lively debate and found common ground. That those of you present would:

- less than 24 hours after that meeting, condone using your group site to say that Green Group had condoned “trespassing and desecrating a black cemetery” and that “Arrowhead Landfill, continues to hurt, disrespect, neglect, violate, & exploit the community”; and
- after receiving our invitation to a follow up meeting, publish on November 13, 2015, that the “landfill is poisoning our homes and destroying our Black cemetery (sic)”

is shameful at best and downright factually deceitful. People outside your community continue to use you and you either cannot see it or are glad to serve as their pawns.

We conducted our community meeting as planned last night regarding the cemetery. At that meeting each of the four (4) prominent leaders of the group genuinely interested in New Hope Cemetery went out of their way to let Ernest and I know that neither you nor anyone else affiliated with your group represented them and that they appreciated our efforts and would continue to work with us to see that the cemetery is cleaned up, maintained and properly preserved. We will not abandon them nor anyone else more interested in serving the memory of their ancestors and culture than serving the agendas of strangers from outside Perry County.

(b) (6), (b) (7)(C)

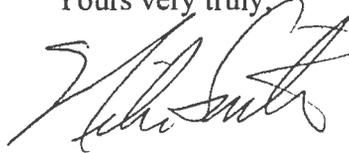
November 18, 2015

Page 2

I hope that you found the information I provided with my email of October 30, 2015 to be helpful. As I told you in our last meeting and in that email, Green Group operates in an open and above board manner. Any and all required environmental testing results we have will be made available to you at your request. We would hope that you and those working with you would be so open. (b) (6), (b) (7)(C) promised to cooperate with us and provide her data and we agreed to work with her to develop (and pay for) a suitable testing protocol that would give comfort to the community concerning the operation and safety of Arrowhead Landfill. My numerous follow up telephone calls and emails to her went unanswered. (b) (6), (b) (7) has never offered up any independent test results to anyone, and none of the plaintiffs in the lawsuit brought alleging illegal pollution by a prior operator ever produced any such test results.

Finally, if the end game you seek is for Arrowhead Landfill to be closed or somehow be made to magically disappear, that will not happen. If you simply wish to be mad and tilt at windmills, that is your choice. If you want to enter into meaningful dialogue, be accurately informed regarding the landfill's operations, and work to see your community prosper as the result of a mutually respectful relationship with a company that wants to be a good corporate citizen, then choose to be part of a solution and let me know of your change of heart.

Yours very truly,

A handwritten signature in black ink, appearing to read "Michael D. Smith", written in a cursive style.

Michael D. Smith

MDS/

Attachment 7

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

February 29, 2016

Mr. Ernest Kaufmann
President
Perry County Associates, LLC
134 Riverstone Terrace, Suite 203
Canton, GA 30114

RE: Permit Modification
Arrowhead Landfill
Permit No. 53-03

Dear Mr. Kaufmann:

On February 11, 2016, the Department received a request from HHNT, Inc. on behalf of Perry County Associates, LLC to reduce the permitted landfill boundary to 973.85 acres (a reduction of 3.12 acres). In addition, the application also requests the modification of the methane monitoring points to reflect the changes in the property boundary. The Department has reviewed and approves your request.

Enclosed please find the modified permit. The permit is effective February 29, 2016, and the expiration date will remain September 26, 2016. If you have any questions on this matter, please contact Mr. Shane Lovett of the Solid Waste Engineering Section at (334) 270-5628.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Scott Story".

S. Scott Story, Chief
Solid Waste Engineering Section
Land Division

SSS/sl



FINAL DETERMINATION

Permit Modification
Perry County Associates, LLC
134 Riverstone Terrace, Suite 203
Canton, GA 30114

Arrowhead Landfill
Permit No. 53-03

February 29, 2016

On February 11, 2016, the Department received a request from HHNT, Inc. on behalf of Perry County Associates, LLC to reduce the permitted landfill boundary to 973.85 acres (a reduction of 3.12 acres). In addition, the application also requests the modification of the methane monitoring points to reflect the changes in the property boundary.

The Land Division has determined that the modification of the permit meets the applicable requirements of ADEM's Administrative Codes Division 13.

Technical Contact:

Shane Lovett
Solid Waste Engineering Section
Land Division



SOLID WASTE DISPOSAL FACILITY PERMIT

PERMITTEE: Perry County Associates, LLC

FACILITY NAME: Arrowhead Landfill

FACILITY LOCATION: Sections 21, 22, 27 and 28, Township 17 North, Range 6 East in Perry County. The facility consists of 973.85 acres with a disposal area of 425.33 acres.

PERMIT NUMBER: 53-03

PERMIT TYPE: Municipal Solid Waste Landfill

WASTE APPROVED FOR DISPOSAL: Nonhazardous solid wastes, noninfectious putrescible and nonputrescible wastes including but not limited to household garbage, commercial waste, industrial waste, construction and demolition debris, tires, and other similar type materials. Special waste approved by ADEM may also be accepted.

APPROVED WASTE VOLUME: 15,000 tons per day

APPROVED SERVICE AREA: States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin

In accordance with and subject to the provisions of the Alabama Solid Wastes and Recyclable Materials Management Act, as amended, Code of Alabama 1975, SS 22-27-1 to 22-27-27 ("SWRMMA"), the Alabama Environmental Management Act, as amended, Code of Alabama 1975, SS 22-22A-1 to 22-22A-15, and rules and regulations adopted thereunder, and subject further to the conditions set forth in this permit, the Permittee is hereby authorized to dispose of the above-described solid wastes at the above-described facility location.

ISSUANCE DATE: September 27, 2011

EFFECTIVE DATE: September 27, 2011

MODIFICATION DATE: November 4, 2011, February 3, 2012, July 30, 2012, October 23, 2012, June 17, 2013, and February 29, 2016

EXPIRATION DATE: September 26, 2016


Alabama Department of Environmental Management

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
SOLID WASTE PERMIT**

Permittee: Perry County Associates, LLC
134 Riverstone Terrace, Suite 203
Canton, GA 30114

Landfill Name: Arrowhead Landfill

Landfill Location: Sections 21, 22, 27 and 28, Township 17 North, Range 6 East in Perry County, Alabama

Permit Number: 53-03

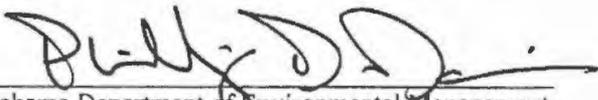
Landfill Type: Municipal Solid Waste

Pursuant to the Alabama Solid Wastes and Recyclable Materials Management Act, Code of Alabama 1975, §§ 22-27-1, *et seq.*, as amended, and attendant regulations promulgated thereunder by the Alabama Department of Environmental Management (ADEM), this permit is issued to Perry County Associates, LLC (hereinafter called the Permittee), to operate a solid waste disposal facility, known as the Arrowhead Landfill.

The Permittee must comply with all terms and conditions of this permit. This permit consists of the conditions set forth herein (including those in any attachments), and the applicable regulations contained in Chapters 335-13-1 through 335-13-14 of the ADEM Administrative Code (hereinafter referred to as the "ADEM Admin. Code"). Rules cited are set forth in this document for the purpose of Permittee reference. Any Rule that is cited incorrectly in this document does not constitute grounds for noncompliance on the part of the Permittee. Applicable ADEM Administrative Codes are those that are in effect on the date of issuance of this permit or any revisions approved after permit issuance.

This permit is based on the information submitted to the Department on December 29, 2010 and as amended for permit renewal, and submitted to the Department on April 12, 2011, November 3, 2011, March 30, 2012, October 11, 2012, June 6, 2013, and February 11, 2016, and as amended for permit modification, and is known as the Permit Application (hereby incorporated by reference and hereinafter referred to as the Application). Any inaccuracies found in this information could lead to the termination or modification of this permit and potential enforcement action. The Permittee must inform ADEM of any deviation from or changes in the information in the Application that would affect the Permittee's ability to comply with the applicable ADEM Admin. Code or permit conditions.

This permit is effective as of September 27, 2011, modified on November 4, 2011, February 3, 2012, July 30, 2012, October 23, 2012, June 17, 2013, and February 29, 2016, and shall remain in effect until September 26, 2016, unless suspended or revoked.


Alabama Department of Environmental Management

2/29/16
Date Signed

SECTION I. STANDARD CONDITIONS

- A. Effect of Permit. The Permittee is allowed to dispose of nonhazardous solid waste in accordance with the conditions of this permit and ADEM Admin. Code Div. 13. Issuance of this permit does not convey property rights of any sort or any exclusive privilege, nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of state or local laws or regulations. Except for actions brought under Code of Alabama 1975, §§ 22-27-1, *et seq.*, as amended, compliance with the conditions of this permit shall be deemed to be compliance with applicable requirements in effect as of the date of issuance of this permit and any future revisions.
- B. Permit Actions. This permit may be suspended, revoked or modified for cause. The filing of a request for a permit modification or the notification of planned changes or anticipated noncompliance on the part of the Permittee, and the suspension or revocation does not stay the applicability or enforceability of any permit condition.
- C. Severability. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- D. Definitions. For the purpose of this permit, terms used herein shall have the same meaning as those in ADEM Admin. Code Division 13, unless this permit specifically provides otherwise; where terms are not otherwise defined, the meaning associated with such terms shall be as defined by a standard dictionary reference or the generally accepted scientific or industrial meaning of the term.
1. "EPA" for purposes of this permit means the United States Environmental Protection Agency.
 2. "Permit Application" for the purposes of this permit, means all permit application forms, design plans, operational plans, closure plans, technical data, reports, specifications, plats, geological and hydrological reports, and other materials which are submitted to the Department in pursuit of a solid waste disposal permit.
- E. Duties and Requirements.
1. Duty to Comply. The Permittee must comply with all conditions of this permit except to the extent and for the duration such noncompliance is authorized by a variance granted by the Department. Any permit noncompliance, other than noncompliance authorized by a variance, constitutes a violation of Code of Alabama 1975, §§ 22-27-1 *et seq.*, as amended, and is grounds for enforcement action, permit suspension, revocation, modification, and/or denial of a permit renewal application.
 2. Duty to Reapply. If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The renewal application must be submitted to the Department at least 180 days before this permit expires.
 3. Permit Expiration. This permit and all conditions therein will remain in effect beyond the permit's expiration date if the Permittee has submitted a timely, complete application as required by Section I.E.2., and, through no fault of the Permittee, the Department has not made a final decision regarding the renewal application.
 4. Need to Halt or Reduce Activity Not A Defense. It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this permit.
 5. Duty to Mitigate. In the event of noncompliance with this permit, the Permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

6. Proper Operation and Maintenance. The Permittee shall at all times properly operate and maintain all facilities and systems of control (and related appurtenances) that are installed or used by the Permittee to achieve compliance with the conditions of this permit.
7. Duty to Provide Information. If requested, the Permittee shall furnish to ADEM, within a reasonable time, any information that ADEM may reasonably need to determine whether cause exists for denying, suspending, revoking, or modifying this permit, or to determine compliance with this permit. If requested, the Permittee shall also furnish the Department with copies of records kept as a requirement of this permit.
8. Inspection and Entry. Upon presentation of credentials and other documents as may be required by law, the Permittee shall allow the employees of the Department or their authorized representative to:
 - a. Enter at reasonable times the Permittee's premises where the regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit.
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit.
 - c. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit.
 - d. Sample or monitor, at reasonable times, any substances or parameters at any location for the purposes of assuring permit compliance or as otherwise authorized by Code of Alabama 1975, §§ 22-27-1 *et seq.*
9. Monitoring, Corrective Actions, and Records.
 - a. Samples and measurements taken for the purpose of monitoring or corrective action shall be representative of the monitored activity. The methods used to obtain representative samples to be analyzed must be the appropriate method from Chapter 335-13-4 or the methods as specified in the Application attached hereto and incorporated by reference. Laboratory methods must be those specified in Standard Methods for the Examination of Water and Wastewater (American Public Health Association, latest edition), Methods for Chemical Analysis of Water and Wastes (EPA-600/4-79-020), Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (EPA Publication SW-846, latest edition), other appropriate EPA methods, or as specified in the Application. All field tests must be conducted using approved EPA test kits and procedures.
 - b. The Permittee shall retain records, at the location specified in Section I.I., of all monitoring, or corrective action information, including all calibration and maintenance records, copies of all reports and records required by this permit, and records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report or record or for periods elsewhere specified in this permit. These periods may be extended by the request of the Department at any time and are automatically extended during the course of any unresolved enforcement action regarding this facility.
 - c. Records of monitoring and corrective action information shall include.
 - i. The exact place, date, and time of sampling or measurement.
 - ii. The individual(s) and company who performed the sampling or measurements.
 - iii. The date(s) analyses were performed.
 - iv. The individual(s) and company who performed the analyses.

- v. The analytical techniques or methods used.
 - vi. The results of such analyses.
 - d. The Permittee shall submit all monitoring and corrective action results at the interval specified elsewhere in this permit.
 - 10. Reporting Planned Changes. The Permittee shall notify the Department, in the form of a request for permit modification, at least 90 days prior to any change in the permitted service area, increase in the waste received, or change in the design or operating procedure as described in this permit, including any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
 - 11. Transfer of Permit. This permit may be transferred to a new owner or operator. All requests for transfer of permits shall be in writing and shall be submitted on forms provided by the Department. Before transferring ownership or operation of the facility during its operating life, the Permittee shall notify the new owner or operator in writing of the requirements of this permit.
 - 12. Certification of Construction. The Permittee may not commence disposal of waste in any new cell or phase until the Permittee has submitted to the Department, by certified mail or hand delivery, a letter signed by both the Permittee and a professional engineer stating that the facility has been constructed in compliance with the permit. The Department must inspect the constructed cells or phases before the owner or operator can commence waste disposal unless the Permittee is notified that the Department will waive the inspection.
 - 13. Compliance Schedules. Reports of compliance or noncompliance with or any progress reports on interim and final requirements contained in any compliance schedule required and approved by the Department shall be submitted no later than 14 days following each schedule date.
 - 14. Other Noncompliance. The Permittee shall report all instances of noncompliance with the permit at the time monitoring reports are submitted.
 - 15. Other Information. If the Permittee becomes aware that information required by the Application was not submitted or was incorrect in the Application or in any report to the Department, the Permittee shall promptly submit such facts or information. In addition, upon request, the Permittee shall furnish to the Department, within a reasonable time, information related to compliance with the permit.
- F. Design and Operation of Facility. The Permittee shall maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of contaminants (including leachate and explosive gases) to air, soil, groundwater, or surface water, which could threaten human health or the environment.
- G. Inspection Requirements.
- 1. The Permittee shall comply with all requirements set forth under ADEM Admin. Code Division 13.
 - 2. The Permittee shall conduct random inspections of incoming loads.
 - 3. Records of all inspections shall be included in the operating record.
- H. Recordkeeping and Reporting.
- 1. The Permittee shall maintain a written operating record at the location specified in Section I.I. The operating record shall include:
 - a. Documentation of inspection and maintenance activities.

- b. Daily Volume reports.
 - c. Personnel training documents and records.
 - d. Solid/Hazardous Waste Determination Forms for Industrial Wastes, and associated ADEM disposal approval correspondence for special wastes, industrial wastes, etc.
 - e. Groundwater monitoring records.
 - f. Explosive gas monitoring records.
 - g. Surface water and leachate monitoring records. Monitoring is subject to applicable conditions of Section VII. of the permit.
 - h. Copies of this Permit and the Application.
 - i. Copies of all variances granted by the Department, including copies of all approvals of special operating conditions (such as approvals for open burning,).
2. Quarterly Volume Report. Beginning with the effective date of this permit, the Permittee shall submit, within thirty (30) days after the end of each calendar quarter, a report summarizing the daily waste receipts for the previous (just ended) quarter. Copies of the quarterly reports shall be maintained in the operating record.
3. Monitoring and Corrective Action Reports. The Permittee shall submit reports on all monitoring and corrective activities conducted pursuant to the requirements of this permit, including, but not limited to, groundwater, surface water, explosive gas and leachate monitoring. The groundwater monitoring shall be conducted in March and September of each year and the reports shall be submitted at least semi-annually. The reports should contain all monitoring results and conclusions from samples and measurements conducted during the sampling period. Explosive gas monitoring must be submitted on a quarterly basis, and the reports should be submitted to the department and placed in the operating record within 30 days of the monitoring event. Copies of the semi-annual groundwater and quarterly explosive gas monitoring reports shall be maintained in the operating record.
4. Availability, Retention, and Disposition of Records.
- a. All records, including plans, required under this permit or Division 13 must be furnished upon request, and made available at reasonable times for inspection by any officer, employee, or representative of the Department.
 - b. All records, including plans, required under this permit or Division 13 shall be retained by the Permittee for a period of at least three years. The retention period for all records is extended automatically during the course of any unresolved enforcement action regarding the facility, or as requested by the Department.
 - c. A copy of records of waste disposal locations and quantities must be submitted to the Department and local land authority upon closure of the facility.
- I. Documents to be Maintained by the Permittee. The Permittee shall maintain, at the Arrowhead Landfill office, the following documents and amendments, revisions and modifications to these documents until an engineer certifies closure of the permitted landfill.
- 1. Operating record
 - 2. Closure Plan.

- J. Mailing Location. All reports, notifications, or other submissions which are required by this permit should be sent via signed mail (i.e. certified mail, express mail delivery service, etc.) or hand delivered to:

Mailing Address.

Chief, Solid Waste Branch, Land Division
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130-1463

Physical Address.

Chief, Solid Waste Branch, Land Division
Alabama Department of Environmental Management
1400 Coliseum Blvd.
Montgomery, Alabama 36110-2059

- K. Signatory Requirement. All applications, reports or information required by this permit, or otherwise submitted to the Department, shall be signed and certified by the owner as follows:
1. If an individual, by the applicant.
 2. If a city, county, or other municipality or governmental entity, by the ranking elected official, or by a duly authorized representative of that person.
 3. If a corporation, organization, or other legal entity, by a principal executive officer, of at least the level of Vice President, or by a duly authorized representative of that person.
- L. Confidential Information. The Permittee may claim information submitted as confidential if the information is protected under Code of Alabama 1975 §§ 22-39-18, as amended.
- M. State Laws and Regulations. Nothing in this permit shall be construed to preclude the initiation of any legal action or to relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation.

SECTION II. GENERAL OPERATING CONDITIONS

- A. Operation of Facility. The Permittee shall operate and maintain the disposal facility consistent with the Application, this permit, and ADEM Admin. Code, Division 13.
- B. Open Burning. The Permittee shall not allow open burning without prior written approval from the Department and other appropriate agencies. A burn request should be submitted in writing to the Department outlining why that burn request should be granted. This request should include, but not be limited to, specifically what areas will be utilized, types of waste to be burned, the projected starting and completion dates for the project, and the projected days and hours of operation. The approval, if granted, shall be included in the operating record.
- C. Prevention of Unauthorized Disposal. The Permittee shall follow the approved procedures for the detecting and preventing the disposal of free liquids, regulated hazardous waste, PCB's, and medical waste at the facility.
- D. Unauthorized Discharge. The Permittee shall operate the disposal facility in such a manner that there will be no water pollution or unauthorized discharge. Any discharge from the disposal facility or practice thereof may require a National Pollutant Discharge Elimination System permit under the Alabama Water Pollution Control Act.

- E. Industrial and Medical Waste Disposal. The Permittee shall dispose of industrial process waste as required by ADEM Admin. Code Division 13, and as specified in the Application. The Permittee, prior to disposal of industrial waste and/or medical waste, shall obtain from each generator a written certification that the material to be disposed does not contain free liquids, regulated hazardous wastes, regulated medical waste, or regulated PCB wastes.
- F. Boundary Markers. The Permittee shall ensure that the facility is identified with a sufficient number of permanent boundary markers that are at least visible from one marker to the next.
- G. Certified Operator. The Permittee shall be required to have an operator certified by the Department on-site during hours of operation, in accordance with the requirements of ADEM Admin. Code 335-13-12.

SECTION III. SPECIFIC MSW LANDFILL REQUIREMENTS

- A. Waste Identification and Management.
 - 1. Subject to the terms of this permit, the Permittee may dispose of the nonhazardous solid wastes listed in Section III.B. Disposal of other waste streams is prohibited, except waste that is granted a temporary or one-time waiver by the Director.
 - 2. The total permitted area for the Arrowhead Landfill is 973.85 acres with 425.33 acres (Tract 1 is 117.63 acres, Tract 2 is 159.28 acres, and Tract 3 is 148.42 acres) permitted for disposal operations.
 - 3. The maximum average daily volume of waste disposed at the facility and approved by the Perry County Commission, and as contained in the permit application shall not exceed 15,000 tons/day, except as provided under Rule 335-13-5-.06(2)(a)5. The average daily volume shall be computed as specified by Rule 335-13-5-.06(2)(a)5.(i).
- B. Waste Streams. The Permittee may accept for disposal nonhazardous solid wastes, noninfectious putrescible and nonputrescible wastes including but not limited to household garbage, commercial waste, industrial waste, construction and demolition debris, tires, and other similar type materials. Special waste approved by ADEM may also be accepted.
- C. Service Area. The Service area for the Arrowhead Landfill as contained in the permit application and approved by the Perry County Commission is the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin.
- D. Special Waste. Disposal of special wastes is subject to a Hazardous/Solid Waste determination by ADEM.
 - 1. Asbestos Waste. The Permittee shall dispose of asbestos waste in accordance with Rule 335-13-4-.26.
 - 2. Foundry Sand. The Permittee shall dispose of foundry waste in accordance with Rule 335-13-4-.26.
 - 3. Petroleum Contaminated Waste. The Permittee shall dispose of petroleum contaminated waste in accordance with Rule 335-13-4-.26.
 - 4. Municipal Solid Waste Ash. The Permittee shall dispose of municipal solid waste ash in accordance with Rule 335-13-4-.26.
- E. Liner Requirements. The Permittee shall install a composite liner system as described in the Application consisting of two feet of clay with a hydraulic conductivity of 1×10^{-7} cm/sec or less, overlain by a 60 mil High Density Polyethylene (HDPE) geomembrane, overlain by an 8 ounce per square yard non-woven

geotextile fabric, and overlain by 12" of protective cover with a hydraulic conductivity greater than or equal to 1×10^{-2} cm/sec. The base of the composite liner system shall be a minimum of five (5) feet above the temporal fluctuation of the groundwater table.

- F. Septic Tank Pumpings and Sewage Sludge. The Permittee shall not dispose of septic tank pumpings and/or sewage sludge unless specifically approved in writing by the department.
- G. Large Dead Animals and Highly Putrescible Wastes. The Permittee shall handle the disposal of large dead animals and/or highly putrescible waste as required by Rule 335-13-4-.22(1)(j).
- H. Cover Requirements. The Permittee shall cover all wastes as required by ADEM Admin. Code Division 13.

List of Alternate Daily Covers approved for use at the Arrowhead Landfill:

1. Synthetic Tarps. The Synthetic Tarps used should be at least 50' x 75' and shall be LandPac Tarps by Pactec or an equivalent. At the conclusion of each week's operation, the Permittee shall be required to cover all exposed waste with a minimum of six inches of compacted earth.
 2. Petroleum Contaminated Soil (PCS). The maximum petroleum contaminant level of the soil that will be used as alternative daily cover material should be 100 parts per million (ppm) of Total Petroleum Hydrocarbons (TPH). The PCS should be used in the same manner as soil daily cover; covering the waste with a uniform compacted 6" thick layer. PCS should be stockpiled within the cell away from daily traffic and operations in such a manner that rainwater runoff will not leave the limits of the lined cell area.
 3. Posi-shell. The Posi-shell will be spray-applied using a standard hydro seeding unit. The typical application thickness should be approximately 1/8" and should not be applied during extremely wet weather. During these extremely wet times, daily soil should be used to cover the waste. At the conclusion of each week's operation, the Permittee shall be required to cover all exposed waste with a minimum of six inches of compacted earth.
 4. Automotive Shredder Residue (ASR). Automotive shredder residue (ASR) as it is commonly known is the non-metal waste generated after junked vehicles go through auto shredders. It is a mixture of crushed glass, ceramics, cloth, rubber, plastic, foam, wood, and air bags. About 25 percent of a shredded vehicle is ASR. Metal components, which are sold for reuse in new products, make up the remainder. ASR should be used in a 6" thick blanket in a manner similar to soil and consistent with the rules. ASR should not be used during rainfall events or on exterior slopes where runoff from the ASR could leave the cell. All run-off from ASR shall be contained within the lined cell. At the conclusion of each week's operation, the Permittee shall be required to cover all exposed waste with a minimum of six inches of compacted earth.
- I. Waste Compaction. All waste shall be thoroughly compacted with adequate landfill equipment before the daily cover is applied. A completed daily cell shall not exceed eight feet in vertical thickness measured perpendicular to the slope of the preceding cell.
 - J. Daily Cells. All waste shall be confined to an area as small as possible and spread to a depth not exceeding two feet prior to compaction, and such compaction shall be accomplished on a face slope not to exceed 4 to 1 or as otherwise approved by the Department. Arrowhead Landfill is granted a variance to operate three working faces. Two working faces have been approved as follows: the first for the placement of MSW/Construction and Demolition waste and the second for the placement of ash waste. Additionally, a temporary working face has been approved for newly constructed cells. This working face will consist of a fluff layer or selected waste that will protect the integrity of the liner and will only be applicable for newly constructed cells until a sufficiently thick initial fluff lift has been achieved. (See Section X., A.). Each of the working faces should be confined to as small an area as possible.

- K. Security. The Permittee shall provide artificial and/or natural barriers, which prevent entry of unauthorized vehicular traffic to the facility.
- L. All Weather Access Roads. The Permittee shall provide an all-weather access road to the dumping face that is wide enough to allow passage of collection vehicles.
- M. Adverse Weather Disposal. The Permittee shall provide for disposal activities in adverse weather conditions.
- N. Personnel. The Permittee shall maintain adequate personnel to ensure continued and smooth operation of the facility.
- O. Equipment. The Permittee shall provide the landfill equipment as required by Rule 335-13-4-.22(1)(f).
- P. Environmental Monitoring and Treatment Structures. The Permittee shall provide protection and proper maintenance of environmental monitoring and treatment structures.
- Q. Vector Control. The Permittee shall provide for vector control as required by ADEM Admin. Code Division 13.
- R. Bulk or Noncontainerized Liquid Waste. The Permittee shall not dispose of bulk or noncontainerized liquid waste, or containers capable of holding liquids, unless the conditions of Rule 335-13-4-.22(1)(k) are met.
- S. Empty Containers. The Permittee shall render empty containers larger than normally found in household waste unsuitable for holding liquids prior to delivery to the landfill unit unless otherwise approved by the Department.
- T. Other Requirements. The Department may enhance or reduce any requirements for operating and maintaining the landfill as deemed necessary by the Land Division.
- U. Other Permits. The Permittee shall operate the landfill according to this and any other applicable permits. Additionally, the Department will verify that the Permittee has obtained a valid permit from the U. S. Army Corps of Engineers regarding an unnamed tributary located within Tract 3 before the construction of Tract 3 may commence.
- V. Scavenging and Salvaging Operations. The Permittee shall prevent scavenging and salvaging operations, except as part of a controlled recycling effort. Any recycling operation must be in accordance with plans submitted and approved by the Department.
- W. Signs. The Permittee shall provide a sign outlining instructions for use of the site. The sign shall be posted and have the information required by Rule 335-13-4-.22(1)(i).
- X. Litter Control. The Permittee shall control litter.
- Y. Fire Control. The Permittee shall provide fire control measures.

SECTION IV. GROUNDWATER MONITORING REQUIREMENTS

- A. The Permittee shall install and/or maintain a groundwater monitoring system, as specified below.
 - 1. The permittee shall construct and maintain the groundwater monitoring wells identified in Tables IV.1. and IV.4. at the locations and schedules specified in the Application, and any other groundwater monitoring wells which are added (Section IV.A.3.) during the active life and the post closure care period.
 - 2. The Permittee shall maintain groundwater monitoring wells GWM-1 and GWM-5 as the background groundwater monitoring wells for the entire facility.

3. The Permittee shall install and maintain additional groundwater monitoring wells as necessary to assess changes in the rate and extent of any plume of contamination or as otherwise deemed necessary to maintain compliance with the ADEM Admin. Code.
4. Prior to installing any additional groundwater monitoring wells, the Permittee shall submit a report to the Department with a permit modification request specifying the design, location and installation of any additional monitoring wells. This report shall be submitted within ninety (90) days prior to the installation which, at a minimum, shall include.
 - a. Well construction techniques including proposed casing depths, proposed total depth, and proposed screened interval of well(s);
 - b. Well development method(s);
 - c. A complete analysis of well construction materials;
 - d. A schedule of implementation for construction; and
 - e. Provisions for determining the lithologic characteristics, hydraulic conductivity and grain-size distribution for the applicable aquifer unit(s) at the location of the new well(s).

B. Groundwater Monitoring Requirements.

1. The Permittee shall determine the groundwater surface elevation at each monitoring well and piezometer identified in Table IV.1. each time the well or piezometer is sampled and at least semi-annually throughout the active life and post-closure care period.
2. The Permittee shall determine the groundwater flow rate and direction in the first zone of saturation at least annually or each time groundwater is sampled and submit as required by ADEM Admin. Code Division 13.
3. Prior to the initial receipt of waste at the facility, the Permittee shall sample, and analyze for the parameters listed in Appendix I of Rule 335-13-4-.27, and/or any other parameters specified by the Department in Table IV. 2., all monitoring wells identified in Section IV.A.2. to establish background water quality and/or as directed by Rule 335-13-4-.27(2)(j) and 335-13-4-.27(2)(a)(1). The records and results of this sampling and analysis activity shall be submitted to the Department, within sixty (60) days of the date of sampling.
4. The Permittee shall sample and analyze all monitoring wells identified in Table IV.1 for the parameters listed in Appendix I of Rule 335-13-4-.27(3), and/or any other parameters specified by the Department in Table IV.3, on a semi-annual basis throughout the active life of the facility and the post-closure care period in accordance with Rule 335-13-4-.27(3). Sampling shall be conducted during March and September of each year, beginning with the effective date of this permit.
5. In addition to the requirements of Sections IV., B.1., B.2., B.3. and B.4., the Permittee shall record water levels, mean sea level elevation measuring point, depth to water, and the results of field tests for pH and specific conductance at the time of sampling for each well.

C. Sampling and Analysis Procedures. The Permittee shall use the following techniques and procedures when obtaining and analyzing samples from the groundwater monitoring wells described in Section IV.A. to provide a reliable indication of the quality of the groundwater.

1. Samples shall be collected, preserved, and shipped (when shipped off-site for analysis) in accordance with the procedures specified in the Application.

2. Samples shall be analyzed according to the procedures specified of the Application, Standard Methods for the Examination of Water and Wastewater (American Public Health Association, latest edition), Methods for Chemical Analysis of Water and Wastes (EPA-600/4-79-020), Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (EPA Publication SW-846, latest edition), or other appropriate methods approved by this Department. All field tests must be conducted using approved EPA test kits and procedures.
3. Samples shall be tracked and controlled using the chain-of-custody and QA/QC procedures specified of the Application.

D. Recordkeeping and Reporting Requirements.

1. Recording of Results. For each sample and/or measurement taken pursuant to the requirements of this permit, the Permittee shall record the information required by Section I.E.9.c.
2. Recordkeeping. Records and results of all groundwater monitoring, sampling, and analysis activities conducted pursuant to the requirements of this permit shall be included in the operating record required by Section I.I.1.

E. Permit Modification. If at any time the Permittee or the Department determines that the groundwater monitoring system no longer satisfies the requirements of 335-13-4-.14 or Section IV.A. of this permit, the Permittee must, within 90 days, submit an application for a permit modification to make any necessary and/or appropriate changes to the system.

TABLE IV.1.
INSTALLED GROUNDWATER MONITORING WELLS

Well	Northing	Easting	Conc/Disk Env	Top Casing Elev	PVC Elev	Surface Elev	Well Type
GWM-1	884667.24	1979482.39	200.63	203.37	203.32	200.1	Up Grad
GWM-2	876720.18	1978344.96	271.63	274.67	274.42	271.2	Dn. Grad
GWM-3	877237.63	1977604.4	269.96	272.67	272.54	269.5	Dn. Grad
GWM-4	877927.07	1976503.62	269.63	272.66	272.55	269.0	Dn. Grad
GWM-5	883499.74	1976238.62	213.26	215.84	215.76	212.7	Up Grad
GWM-15	876717.19	1978352.88	271.69	274.69	274.62	271.2	Dn. Grad
GWM-16	877234.71	1977611.58	269.83	272.72	272.51	269.5	Dn. Grad
GWM-17	877934.67	1976495.99	269.85	273.33	273.20	269.4	Dn. Grad

*ft-bls = Depth in feet below land surface

TABLE IV.2.
BACKGROUND GROUNDWATER MONITORING

NOTE: The parameters in this Table are those listed in Appendix I of Chapter 335-13-4.

NOTE: The Permittee shall conduct a minimum of four independent sampling events as the initial sampling event, and analyze for the parameters listed above, in order to establish background water quality. Following the four independent events, the Permittee can submit a request, with justification, for the deletion of or change in these parameters.

TABLE IV.3.
SEMI-ANNUAL GROUNDWATER MONITORING PARAMETERS

NOTE: The parameters in this Table are those listed in Appendix I of Chapter 335-13-4 , and/or any other waste stream specific parameters.

TABLE IV.4.
GROUNDWATER MONITORING WELLS TO BE INSTALLED

Monitoring Well Number	Top of Casing (feet msl)	Part Monitoring
GWM-6	To be installed	Tract 1
GWM-7	To be installed	Tract 2
GWM-8	To be installed	Tract 2
GWM-9	To be installed	Tract 2
GWM-10	To be installed	Tract 2
GWM-11	To be installed	Tract 2
GWM-12	To be installed	Tract 1
GWM-13	To be installed	Tract 1
GWM-14	To be installed	Tract 1
GWM-18	To be installed	Tract 1
GWM-19	To be installed	Tract 2
GWM-20	To be installed	Tract 2
GWM-21	To be installed	Tract 2
GWM-22	To be installed	Tract 2
GWM-23	To be installed	Tract 2
GWM-24	To be installed	Tract 2
GWM-25	To be installed	Tract 2
GWM-26	To be installed	Tract 2
GWM-27	To be installed	Tract 3
GWM-28	To be installed	Tract 3
GWM-29	To be installed	Tract 3
GWM-30	To be installed	Tract 3
GWM-31	To be installed	Tract 3
GWM-32	To be installed	Tract 3
GWM-33	To be installed	Tract 3
GWM-34	To be installed	Tract 3
GWM-35	To be installed	Tract 3
GWM-36	To be installed	Tract 3
GWM-37	To be installed	Tract 3
GWM-38	To be installed	Tract 3
GWM-39	To be installed	Tract 3
GWM-40	To be installed	Tract 3

SECTION V. GAS MONITORING REQUIREMENTS

The Permittee must install and maintain an explosive gas monitoring system in accordance with ADEM Admin. Code Division 13.

SECTION VI – MUNICIPAL SOLID WASTE LANDFILL AIR EMISSIONS

This landfill may be subject to ADEM Admin. Code Division 3 Admin. Code and the Federal Clean Air Act. Contact the ADEM Air Division for applicable requirements and permits.

SECTION VII. LEACHATE AND SURFACE WATER MANAGEMENT REQUIREMENTS

The Permittee must collect and dispose of the leachate that is generated at the facility. The Permittee shall install a leachate collection system designed to maintain less than 12 inches (30 cm) depth of leachate over the liner. Prior to disposal, the permittee shall provide the Department with a letter from the receiving publicly or privately owned treatment works, approving the acceptance of the leachate. Discharges to publicly or privately owned treatment works may be subject to the requirements of the ADEM Water Division's State Indirect Discharge (SID) Program. The permittee shall construct and maintain run-on and run-off control structures. Surface water discharges from drainage control structures shall be permitted through the ADEM Water Division's National Pollutant Discharge Elimination System (NPDES) Program.

Arrowhead Landfill is granted permission for leachate recirculation. Leachate recirculation should be accomplished through two (2) methods. The first method should involve loading leachate at the leachate storage tank and hauling it by tanker to the working face where it will be distributed via a spray nozzle. The second method should involve injecting leachate into the leachate recirculation lines that will be constructed 4' to 6' below the waste surface. Both methods should distribute leachate at a rate and manner that does not cause runoff, odor, or operation difficulties. Leachate should not be recirculated during or immediately after rainfall events. Also, care should be taken to assure that no more leachate is applied than the facility can manage. Records of leachate recirculation should be made part of the facility operating record. The maximum daily leachate recirculation should be 20,000 gpd and should only be applied where there is a minimum of 20 feet of waste in place.

The Permittee is also granted permission to construct an Intermediate Drainage System (Capillary Break) to provide stability to the waste mass in the coal ash disposal area in the Tract 1 Area of the landfill and as depicted on the engineering plans dated July 30, 2010. This Intermediate Drainage System should be constructed with Double Bonded Geocomposite Drainage Media as its primary drainage path. The Geocomposite Drainage Media should be 250 mil thick HDPE geonet material with 6 ounce per square yard non-woven geotextile bonded to the geonet. The proposed system should require the Geocomposite Drainage Media to be placed over a large portion of the Tract 1 area at grades greater than 5% and less than 10% and should be installed approximately 90 vertical feet above the landfill base liner system to promote drainage within the waste mass at that elevation.

SECTION VIII. CLOSURE AND POST-CLOSURE REQUIREMENTS

The Permittee shall close the landfill and perform post-closure care of the landfill in accordance with Division 13.

- A. Final Cover. The Permittee shall grade final soil cover such that surface water does not pond over the permitted area as specified in the Application. The final cover system as specified in the application shall consist of 12 inches of compacted soil with a permeability of 1×10^{-5} cm/sec, 40 mil flexible membrane liner, geocomposite drainage system, 18 inches of protective soil, 6 inches of topsoil capable of supporting vegetative cover.
- B. Vegetative Cover. The Permittee shall establish a vegetative or other appropriate cover within 90 days after completion of final grading requirements in the Application. Preparation of a vegetative cover shall include, but not be limited to, the placement of seed, fertilizer, mulch, and water.
- C. Notice of Intent. The Permittee shall place in the operating record and notify the Department of their intent to close the landfill prior to beginning closure.
- D. Completion of Closure Activities. The Permittee must complete closure activities of each landfill unit in accordance with the Closure Plan within 180 days of the last known receipt of waste.
- E. Certification of Closure. Following closure of each unit, the Permittee must submit to the Department a certification, signed by an engineer, verifying the closure has been completed according to the Closure Plan.

- F. Post-Closure Care Period. Post-closure care activities shall be conducted after closure of each unit throughout the life of this permit and continuing for a period of thirty (30) years following closure of the facility. The Department may shorten or extend the post-closure care period applicable to the solid waste disposal facility. The Permittee shall reapply in order to fulfill the post-closure care requirements of this permit.
- G. Post-Closure Maintenance. The Permittee shall provide post closure maintenance of the facility to include regularly scheduled inspections. This shall include maintenance of the cover, vegetation, monitoring devices and pollution control equipment and correction of other deficiencies that may be observed by ADEM. Monitoring requirements shall continue throughout the post closure period as determined by the Department unless all waste is removed and no unpermitted discharge to waters of the State have occurred.
- H. Post-Closure Use of Property. The Permittee shall ensure that post closure use of the property never be allowed to disturb the integrity of the final cover, liner, or any other component of the containment system. This shall preclude the growing of deep-rooted vegetation on the closed area.
- I. Certification of Post-Closure. Following post-closure of each unit, the Permittee must submit to the Department a certification, signed by an engineer, verifying the post-closure has been completed according to the Post-Closure Plan.
- J. Notice in Deed to Property. The Permittee shall record a notation onto the land deed containing the property utilized for disposal within 90 days after permit expiration, revocation or when closure requirements are achieved as determined by the Department as stated in the Application. This notation shall state that the land has been used as a solid waste disposal facility, the name of the Permittee, type of disposal activity, location of the disposal facility and beginning and closure dates of the disposal activity.
- K. Recording Instrument. The Permittee shall submit a certified copy of the recording instrument to the Department within 120 days after permit expiration, revocation, or as directed by the Department as described in the Application.
- L. Removal of Waste. If the Permittee, or any other person(s), wishes to remove waste, waste residues, the liner, or any contaminated soils, the owner must request and receive prior approval from the Department.

SECTION IX. FINANCIAL ASSURANCE

- A. The Permittee shall maintain detailed written cost estimates, in current dollars, at the landfill office and on file with ADEM in accordance with ADEM Admin. Code 335-13-4-28.
- B. All cost estimates must be updated annually as required by ADEM Admin Code 335-13-4-28.
- C. The Permittee must place a copy of the financial assurance mechanism along with other items required by ADEM Admin. Code 335-13-4-28. into the landfill operating record and submitted to ADEM before the initial receipt of waste in the case of closure, post-closure care, or no later than 120 days after corrective action remedy has been selected.
- D. The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed.
- E. The financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law.
- F. The Permittee shall demonstrate continuous compliance with ADEM Admin. Code 335-13-4-28. by providing documentation of financial assurance in at least the amount that equals or exceeds the cost estimate. Changes in the financial assurance mechanism must be approved by the Department.

- G. The Permittee shall increase the closure, post-closure or corrective action cost estimates and the amount of financial assurance if changes in the closure, post-closure or correction action plans or landfill conditions increase the maximum cost.
- H. The Permittee may reduce the amount of financial assurance by submitting justification and a revised estimate to ADEM for approval.

SECTION X. VARIANCES

- A. A variance is granted for the Arrowhead Landfill from Rule 335-13-4-.22.(1)(b) which states that all waste shall be confined to as small an area as possible. Under this variance, the Arrowhead Landfill is allowed to operate three working faces. Two working faces have been approved as follows: the first for the placement of MSW/Construction and Demolition waste and the second for the placement of ash waste. Additionally, a temporary working face has been approved for newly constructed cells. This working face will consist of a fluff layer or selected waste that will protect the integrity of the liner and will only be applicable for newly constructed cells until a sufficiently thick initial fluff lift has been achieved. Each of the working faces should be confined to as small an area as possible. (See Section III., J.)
- B. A variance is granted from Rule 335-13-4-.20(2)(c)3. requiring terraces every 20 feet rise in elevation. This variance requires terraces every 40 feet rise in elevation.

Any variance granted by the Department may be terminated by the Department whenever the Department finds, after notice and opportunity for hearing, that the petitioner is in violation of any requirement, condition, schedule, limitation or any other provision of the variance, or that operation under the variance does not meet the minimum requirements established by state and federal laws.

EXHIBIT 2

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950



April 8, 2016

Matthew R. Boca, Esq.
Marianne Engelman Lado, Esq.
Earthjustice
705 Second Avenue, Suite 203
Seattle, Washington 98104

Dear Mr. Baca and Ms. Lado:

I have received and reviewed your correspondence dated March 25, 2016, requesting ADEM involvement in two matters that have arisen between certain complainants in EPA File No. 12R-13-R4 and attorneys representing Arrowhead Landfill. After a review of permit 53-03, ADEM has determined that the permit holder, Perry County Associates, LLC (PCA), is in compliance with the conditions set forth in said permit.

Your letter references concerns about New Hope Church Cemetery; however, the cemetery property is outside the boundaries of the landfill regulated by ADEM. As part of its original permit application in 2005, PCA entered a Memorandum of Agreement with the Alabama Historical Commission (AHC) to conduct an archaeological and historical investigation of eight potentially significant historical areas at the landfill site. On August 10, 2007, the AHC specifically approved PCA's efforts to investigate and preserve these areas. The landfill property immediately surrounding the cemetery was not designated as one of these eight study sites. As you correctly mention, in February of this year ADEM modified PCA's solid waste permit to remove the area immediately adjacent to New Hope Cemetery, an area of approximately 3 acres, from the regulated boundary of the landfill property. Since the cemetery, and now its surrounding area, are outside the regulated landfill property, any actions by PCA or others at the cemetery are outside the purview of this ADEM permit.

We also have reviewed the correspondence you cite as attachments to your letter and have concluded the issues between the parties constitute a private dispute regarding allegations of defamation, libel, and slander unrelated to EPA File No. 12R-13-R4. None of the cited correspondence to local citizens from PCA or its attorneys, was issued by, through or on behalf of the Alabama Department of Environmental Management.

A copy of your letter has been forwarded to Perry County Associates, LLC and its attorneys.

Sincerely,

Lance R. LeFluer
Director

LRL:tj

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
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(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
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(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

GREEN GROUP HOLDINGS, LLC, a)
Georgia limited liability company and)
HOWLING COYOTE, LLC, a Georgia)
limited liability company,)

PLAINTIFFS,)

VS.)

CIVIL ACTION NO.:

(b) (6) Privacy [Redacted]

[Redacted], individually and as members)
and officers of BLACK BELT CITIZENS)
FIGHTING FOR HEALTH AND)
JUSTICE, an unincorporated association,)
and Defendants 1 through 10, who are those)
persons writing and/or posting the libelous)
content made the subject of this litigation)
and Defendants 11-20, who are those)
persons collaborating with those Defendants)
who wrote and published the libelous)
content made the subject of this litigation,)
all of whose true and correct names are)
unknown to Plaintiffs at this time but will)
be added by Amendment when ascertained,)

DEFENDANTS.)

COMPLAINT

PARTIES

1. The Plaintiff Green Group Holdings, LLC, is a Georgia limited liability company having its principal place of business in Canton, Georgia.

2. The Plaintiff, Howling Coyote, LLC, is a Georgia limited liability company having its principal place of business in Canton, Georgia.

3. The Defendant (b) (6) Privacy is a resident citizen of Perry County, Alabama, over the age of 19 years and of sound mind.

4. The Defendant (b) (6) Privacy a resident citizen of Perry County, Alabama, over the age of 19 years and of sound mind.

5. The Defendant (b) (6) Privacy is a resident citizen of Perry County, Alabama, over the age of 19 years and of sound mind.

6. The Defendant (b) (6) Privacy is a resident citizen of Perry County, Alabama, over the age of 19 years and of sound mind.

JURISDICTION

7. This action is brought pursuant to 28 U.S.C. §1332, as a civil action between citizens of different states where the amount in controversy exceeds Seventy Five Thousand and no/100 DOLLARS (\$75,000.00), exclusive of interest and costs.

8. The Plaintiff Green Group Holdings, LLC, (“Green Group”) is a Georgia limited liability company having its principal place of business in Canton, Georgia. The two owners of membership interests in Green Group, each owning a fifty per cent (50%) interest, are Herzog Contracting Corp., a Missouri corporation (“Herzog”), having its principal place of business in St. Joseph, Missouri, and Phillips Management and Services, LLC, a Tennessee limited liability company (“PMS”), having its principal place of business in Knoxville, Tennessee. Phillips Management and Services, LLC, is wholly owned by the W.T. Phillips, Sr. 2005 Irrevocable Family GSTT Trust, dated April 28, 2005 (the

“Trust”). The Trustee of this Trust is W. T. Phillips, Sr., and under the said trust agreement, the Trustee has the power to hold, manage, and dispose of assets for the benefit of the Trust’s beneficiaries. W. T. Phillips, Sr., is a resident citizen of Land O’ Lakes, Florida. The citizenship of Herzog and the Trust are thus deemed to be the states of Missouri¹ and Florida, respectively.

9. The Plaintiff Howling Coyote, LLC, (“Howling Coyote”) is a Georgia limited liability company having its principal place of business in Canton, Georgia, is the wholly owned subsidiary of Green Group Environmental Services, LLC, a Georgia limited liability company, a wholly owned subsidiary of Green Group, and is thus deemed to have the same citizenship as Green Group.

10. Complete diversity exists because all known and named Defendants are residents of the state of Alabama while the Defendants are deemed to be residents of the states of Missouri and Florida.

FACTUAL ALLEGATIONS

11. Howling Coyote was established by Green Group to own and operate the Arrowhead Landfill which it purchased pursuant to the Second Amended Order Authorizing the Sale of The Sale Assets pursuant to 11 U.S.C. § 363(b), Free and Clear of All Liens, Claims and Encumbrances (Doc. 404) entered by the United States Bankruptcy Court for the Southern District of Alabama, Northern Division, on December 21, 2011².

¹ 28 U.S.C. § 1332(c)(1)

² See: *In re Perry Uniontown Ventures I, LLC*, and *Perry County Associates, LLC*, cases numbered 10-00276-MAM-11 and 10-277-MAM, Jointly Administered, in the United States Bankruptcy Court for the Southern District of Alabama, Northern Division.

12. The sale of Arrowhead Landfill was closed on December 21, 2011, and the deed to Howling Coyote from James M. Grady, as Liquidating Trustee, was recorded on December 21, 2011, in office of the Probate Judge for Perry County, Alabama, in Deed Book 614 at Pages 591, *et seq.*

13. On December 22, 2008, a dike failure released or spilled an estimated 5.4 million cubic yards of coal ash³ into the adjacent waters of the Emory River that covered about 300 acres, including most of Swan Pond Embayment, the lower Emory River, and reservoir shorelands.

14. On May 11, 2009, TVA and the U. S. Environmental Protection Agency (“EPA”) Region 4 entered into an *Administrative Order and Agreement on Consent*, Docket No.: CERCLA-04-2009-3766, Proceeding Under Sections 104(a), 106(a), and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (the “Administrative Order”),⁴ which provided in part as follows:

“TVA shall not permanently dispose of any Waste Material at an off-Site facility, or in a new landfill on-Site, unless that facility or landfill is operating in compliance with RCRA Subtitle D permitting requirements for operation and disposal of industrial wastes which, at a minimum, shall include the use of a synthetic liner, leachate collection system, groundwater monitoring, financial assurance, and closure and post-closure care.”

15. Pursuant to the Administrative Order, TVA solicited proposals and then submitted to EPA Region 4 for approval, its Offsite Ash Disposal Options Analysis recommending that Arrowhead Landfill be approved as the disposal site for the Time-

³ Also known as “fly ash”, “bottom ash”, coal combustion residual (“CCR”) and/or coal combustion waste (“CCW”).

⁴ Attached hereto as Exhibit A (at pp. 18-19) and made a part hereof by this reference.

Critical Removal Action, and on July 2, 2009, EPA Region 4, approved that plan.⁵ TVA found and EPA concurred that:

“The Arrowhead Landfill is a state-of-the-art, Subtitle D Class I facility. The composite liner system consists of 2 feet of 1×10^{-7} cm/sec compacted clay, a 60 mil high density polyethylene geomembrane liner, and a 2 foot thick drainage layer with a leachate collection system and protective cover. The site geology consists of the Selma Group chinks which ranges from 500 to 570 feet thick across the site, with a permeability less than 1×10^{-8} cm/sec. The uppermost groundwater aquifer is located beneath this layer.”

16. Arrowhead Landfill, under its prior ownership, began acceptance of the time-critical waste material, consisting primarily of coal ash released from the Tennessee Valley Authority (“TVA”)’s Kingston Fossil Plant, on July 4, 2009.

17. The time-critical waste material was loaded into “burrito bag” lined gondola rail cars in Kingston and shipped to Arrowhead Landfill by rail, unloaded and transported by truck from the railhead to the disposal site. The waste material maintained a moisture content of approximately 25% while in the rail cars and a moisture content of approximately 23% while exposed in the disposal cell. The coal ash did not become airborne at anytime after it arrived at Arrowhead Landfill’s rail yard.

18. The overwhelming majority of the waste material from Kingston was disposed of in disposal cells that have been closed in accord with the rules and regulations promulgated by the Alabama Department of Environmental Management (“ADEM”).

19. ADEM is primarily responsible for the issuance of the permits necessary to operate Arrowhead Landfill as well as the monitoring of Arrowhead’s compliance with the

⁵ See Offsite Ash Disposal Options Plan and Approval attached hereto as Exhibit B (at p. 13) and made a part hereof by this reference.

terms of those permits. The permits that have been issued, and in some cases revised and/or renewed by ADEM⁶ are:

Solid Waste Disposal Facility Permit No. 53-03
General NPDES Permit No. ALG160167 (Landfill)
General NPDES Permit No. ALG140902 (Trans-Load Station)
State Indirect Discharge Permit No. IU395300144

20. Arrowhead Landfill opened on October 15, 2007. Since that date it has received no notices of violation of any of its permits from ADEM or EPA despite having been inspected numerous times by each.

21. Black Belt Citizens Fighting for Health and Justice (“Black Belt”) publishes and maintains a website at <http://blackbeltcitizens.wix.com/blackbeltcitizens>. That website is disseminated to a national and international market and states that one of Black Belt’s goals is to “Get rid of the Arrowhead Landfill”.

22. Black Belt’s website further states, under its “Projects” tab that:

“Arrowhead Landfill, located on south Perry County Road 1 near Uniontown, Alabama, **poses a serious health and environmental threat** to our area. **Built on an unsuitable site** over our aquifer, it now contains almost 4 million tons of toxic coal ash from the Kingston TN spill. Stormwater run-off and **deliberate discharges from the landfill reveal high levels of arsenic** which, along with **toxic dust and noxious odors, are impacting residents**, their livestock, and the garden produce on which they depend.” (Emphasis added.)

23. Black Belt publishes and maintains a Facebook page that is disseminated to a national and international market. That Facebook page has been used in a false and

⁶ Perry County Associates, LLC, an Alabama limited liability company, is the holder of all permits issued by ADEM. Its principal place of business is in Canton, Georgia, and it is wholly owned by Central Alabama, LLC, a Georgia limited liability company, with its principal place of business in Canton, Georgia. Central Alabama, LLC, is the wholly owned subsidiary of Green Group.

malicious manner to accomplish Black Belt's stated goal of getting rid of Arrowhead Landfill. It may be found at <https://www.facebook.com/Black-Belt-Citizens-753236721412415/>.

24. The posts to this Facebook page (which the Defendants allege were written and posted on their Facebook page without their prior knowledge or approval)⁷ include the following specific false and defamatory publications:

October 23, 2015: Arrowhead Landfill and its owners, **Green Group Holdings, neglects laws, peoples' rights, and our culture. First, corruption and unlawful actions get the landfill here.** Then, 4 million tons of coal ash and garbage from 33 states. Now, Arrowhead landfill and **Green Group Holdings are trespassing and desecrating a black cemetery.** Black lives matter! Black ancestors matter! (Emphasis added.)

November 2, 2015: Coal ash landfills, like **Arrowhead Landfill, continue to leak toxins into rivers, streams, and groundwater,** potentially affecting the quality of drinking water. This toxic waste effects everyone, please watch this short film about the problems at Arrowhead. (Emphasis added.)

November 13, 2015: Black Belt Citizens demand no more coal ash in Uniontown! Black Belt Citizens demand ADEM and EPA enforce their laws to prevent further discrimination against the community. **The landfill is poisoning our homes and destroying our Black cemetery (sic).** THIS IS ENVIRONMENTAL INJUSTICE! Where's our justice? (Emphasis added.)

November 13, 2015: Uniontown residents continue to be upset over the actions of the Arrowhead Landfill, over the past 3 days there has been another unpermitted (illegal) discharge leaving **Green Group Holdings toxic landfill.** This has been occurring for years and ADEM has never enforced their permit limits to stop this problem. The majority of the **residents around the landfill are worried about their** water, air, property values, **families' health, and the nearby sacred cemetery that is also being desecrated by the landfill.** (Emphasis added.)

⁷ Taking this allegation to be true, it forms the basis for the addition of fictitious party Defendants.

November 18, 2015: Continued onslaught, pollution, exploitation, & crimes against our Black community; unpermitted discharges leaving from **toxic Arrowhead Landfill** & destroying property values; increasing health threats, stress, & violence; these oppressive actions cause poverty & discrimination. The **Arrowhead Landfill is also desecrating the nearby Black cemetery.** (b) (6) Privacy, (b) (7)(C) Enforcement Prohibited President of Black Belt Citizens, says "I feel like I'm in prison, we're **suffocated by toxic pollution** & extreme poverty. Where are my freedoms? This is an environmental injustice & it's happening in Uniontown & everywhere" (Emphasis added.)

25. On November 19, 2015, Plaintiffs' counsel sent a letter to Defendants by e-mail demanding that, given the nature of the posting via electronic media, that Defendants immediately delete these posts from their Facebook page and retract their prior posts as being false and misleading. Further demand was made that they immediately cease and desist from making false, erroneous statements about Green Group Holdings and Arrowhead Landfill.

26. There was no response to the November 19, 2015, and further posts to this Facebook page include the following specific false and defamatory publications:

November 20, 2015: Pictures of the New Hope Cemetery, neighbor of Arrowhead Landfill. The photos are of possible trespass and recent bulldozing done by the landfill, some of the graves are unable to be located, family members are upset over their **sacred space being violated, damaged, & desecrated.** Arrowhead Landfill is on the site of an older plantation. The New Hope Cemetery is the final resting place of former workers, indentured servants, and slaves of the plantation. Recent actions by the landfill and improper enforcement from the state constantly remind Uniontown's residents of their past life full of violence, hate, & oppression. (Emphasis added.)

December 5, 2015: "We are tired of being taken advantage of in this community," said Uniontown resident (b) (6) Privacy who is a member of the group Black Belt Citizens Fighting for Health and Justice. "The living around here can't rest because of the **toxic material** from the coal ash **leaking into creeks and contaminating the environment**, and the deceased can't rest because of **desecration of their resting place.**" (Emphasis added.)

January 11, 2016: **Multiple pollution sources impact residents including Arrowhead Landfill** which stores over 4 million tons of toxic coal ash. This **landfill is experiencing unpermitted amounts of water runoff leaving its site and entering neighboring property.** Also, the landfill may have committed **illegal trespass & desecration of an adjacent Black cemetery.** The owners of this landfill, **Green Group Holdings, own and operate many extreme landfills around the US.**

...

This event is created to unite citizens across Perry County and Uniontown, Alabama's Black Belt, and the Southeast US to accomplish the following:

...

- Identify communities' needs against environmental injustices including **illegal pollution**, coal ash, corporate interests for **toxic landfills**, and "**extreme energy waste sites**" (Emphasis added.)

January 14, 2016: Join us this Saturday in Uniontown for Building Bridges for Justice as we focus on the **toxic, 4 million tons of coal ash** sitting in the Arrowhead Landfill. The **landfill's pollution problems are influencing the decrease of property values while increasing health concerns.** This extremely large landfill owned by Green Group Holdings has been reportedly **trespassing and desecrating a nearby Black Cemetery.** These impacts are very discriminatory and we feel our civil rights are being violated by environmental racism at all levels. (Emphasis added.)

February 25, 2016: "Its a landfill, its a tall mountain of coal ash and it has affected us. **It affected our everyday life.** It really has done a lot to our freedom. **Its another impact of slavery.** ...Cause we are in a black residence, things change? And you can't walk outside. And **you can not breathe. I mean, you are in like prison.** I mean, its like **all your freedom is gone.** As a black woman, our voices are not heard. EPA hasn't listened and ADEM has not listened. Whether you are white or black, rich or poor, it should still matter and **we all should have the right to clean air and clean water.** I want to see EPA do their job."

Powerful words from our President (b) (6) Privacy, (b) (7)(C) Enforcement Privacy (Emphasis added.)

March 1, 2016: The **toxic Arrowhead Landfill** continues to hurt/violate/oppress the community with the **desecration of the adjacent cemetery**, the **constant run-off of contaminated water**, the **bad odors and smells**, and the **depression of property value.**

Watch this small video by Black Belt Citizens member Timothy Black as he records run-off at **toxic Arrowhead.** Black Belt Citizens stand with all communities impacted by toxic coal ash and extreme energy wastes. We

stand united with all communities suffering from oppressive and discriminatory policies and practices. We stand with all people who fight for health and justice. (Emphasis added.)

27. On March 10, 2016, Plaintiffs' counsel sent a letter to Defendants by e-mail demanding that, given the nature of the posting via electronic media, Defendants immediately delete these posts from their Facebook page and retract their prior posts as being false and misleading. Further demand was made that they immediately cease and desist from making false, erroneous statements about Green Group Holdings and Arrowhead Landfill.

28. On the late afternoon of March 15, 2016, defendant [REDACTED] (b) (6) Privacy, (b) (7)(C) Entie sent an email on her behalf as well as on behalf of her sister, Defendant [REDACTED] (b) (6) Privacy, acknowledging receipt of the March 10, 2016 letter and providing notice that the offending posts had been removed from the Black Belt Facebook page. She further alleged that the posts were written and posted without the knowledge or approval of the officers of Black Belt (the Defendants) and she stated that a further response to our "requests" would be forthcoming from the Defendants or their (unnamed) "attorneys".

29. On the early morning of March 16, 2016, Plaintiffs' counsel sent a letter to Defendants by e-mail which, *inter alia*, reminded Defendants of the demand for a repudiation or retraction of their prior posts and extending the previously provided deadline for its publication to Friday March 18, 2016. Inquiry was also made as to whether Defendant Schaeffer was speaking for all four Defendants or just herself and her sister. Demand was also made for the disclosure of the identity and contact information for the

person or persons who did write and post the libelous material that had been removed from Black Belt's Facebook page.

30. On March 17, 2016, defendant (b) (6) Privacy, (b) (7)(C) EPIO sent an email on her behalf as well as on behalf of her sister, Defendant (b) (6) Privacy, (b) (7)(C) EPIO again stating that a further response to our letter would be forthcoming from the Defendants or their (unnamed) "counsel".

31. On March 18, 2016, a letter of representation as to all four Defendants was received promising a full response after meeting with those defendants "early next week".

32. The promised "full response" was received March 28, 2016, and was little more than an argumentative letter which included no retraction or repudiation of any of the material specified above as false, defamatory and misleading and lacking in any factual support.

33. A final demand for a retraction was delivered on March 30, 2016, and the deadline given in that demand for making such retraction has passed without any response from Defendants or their counsel.

COUNT I

(LIBEL)

34. Plaintiffs aver that the Defendants published the above material knowing of its falsity and sensationalizing sting, with malice by intentional action or with reckless disregard for the truth, with an intent to disparage and demonize Plaintiffs and Arrowhead Landfill in the hope of achieving their goal of getting rid of Arrowhead Landfill.

35. Plaintiffs aver that by portraying Arrowhead Landfill as a facility that is a corrupt, intentional polluter of the Uniontown community that also desecrates cemeteries

and is intentionally preying on that community to the extent that it calls to mind slavery times and false imprisonment, the Defendants have through the national and international publication of such sensational and defamatory (though false) allegations permanently injured and damaged the business and reputation of Plaintiffs.

36. As a proximate consequence of the libel and defamation of Plaintiffs, they have been injured and permanently damaged as set forth herein.

WHEREFORE, the Plaintiffs demand judgment against the Defendants, separately and severally, in the amount of Five Million and no/100 DOLLARS (\$5,000,000.00) in compensatory damages and Ten Million and no/100 DOLLARS (\$10,000,000.00) in punitive damages.

COUNT II

(SLANDER)

37. Plaintiffs further aver that the Defendants organized and publicized a “news conference” held on December 4, 2015, featuring the Alabama State Conference of the NAACP in Uniontown, Alabama, and during that press conference, Defendant [REDACTED] told the press there assembled, including Dennis Pillion from al.com⁸, that:

"We are tired of being taken advantage of in this community," said Uniontown resident [REDACTED] who is a member of the group Black Belt Citizens Fighting for Health and Justice. "The living around here can't rest because of the **toxic material** from the coal ash **leaking into creeks and contaminating the environment**, and the deceased can't rest because of **desecration of their resting place**." (Emphasis added.)⁹

⁸ Articles on al.com are available nationally and internationally through their on line presence at <http://www.al.com>.

⁹ See: *Cemetery Dispute the Latest Conflict Between Arrowhead Landfill, Uniontown Residents*, Dennis Pillion, December 5, 2015,

38. Plaintiffs aver that the the Defendant [REDACTED] knew or had reason to know of the lack of a truthful foundation for his statement and yet used the occasion to further hype the sensational and defamatory nature of the continuing campaign by Black Belt against Arrowhead Landfill in furtherance of its stated goal to “Get rid of the Arrowhead Landfill”.

39. Plaintiffs further aver that the Defendants obtained an appearance by Defendant [REDACTED] on the “Uprising with Sonali” radio show which originates in Southern California and is available nationally and internationally through that show’s website. During Defendant [REDACTED]’s appearance, she made statements on air that were false and defamatory, including:

“Its a landfill, its a tall mountain of coal ash and it has affected us. **It affected our everyday life.** It really has done a lot to our freedom. **Its another impact of slavery.** ...Cause we are in a black residence, things change? And you can't walk outside. And **you can not breathe. I mean, you are in like prison.** I mean, its like **all your freedom is gone.**”

“As a black woman, our voices are not heard. EPA hasn't listened and ADEM has not listened. Whether you are white or black, rich or poor, it should still matter and **we all should have the right to clean air and clean water.** I want to see EPA do their job.”

40. The statements made by the Defendants [REDACTED] were false and defamatory and were made with the malicious intent or reckless disregard to publish such false statements despite knowing or having reason to know of their falsity.

41. Plaintiffs aver the publication of such sensational and defamatory (though false) allegations have permanently injured and damaged the business and reputation of Plaintiffs.

42. As a proximate consequence of the slander of Plaintiffs, they have been injured and permanently damaged as set forth herein.

WHEREFORE, the Plaintiffs demand judgment against the Defendants, separately and severally, in the amount of Five Million and no/100 DOLLARS (\$5,000,000.00) in compensatory damages and Ten Million and no/100 DOLLARS (\$10,000,000.00) in punitive damages.

TRIAL BY JURY is demanded as to all counts.

//s// Michael D. Smith
Michael D. Smith (ASB-0052-H66M)

OF COUNSEL:

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701 22nd Avenue, Suite 1
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Facsimile: (205) 409-3144
msmith@smithstaggs.com

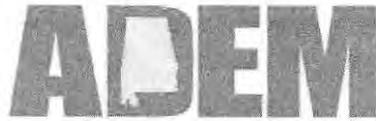
//s// Kirkland E. Reid (with permission)
Kirkland E. Reid (REIDK9451)

OF COUNSEL:

JONES WALKER, LLP
11 N. Water Street, Suite 1200
Mobile, Alabama 36602
Telephone: (251) 439-7513
Facsimile: (251) 439-7358
kreid@joneswalker.com

EXHIBIT 4

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

July 19, 2012

CERTIFIED MAIL (NO. 91 7108 2133 3936 3728 4428)
RETURN RECEIPT REQUESTED

Mr. Rafael DeLeon, Director
U.S. Environmental Protection Agency
Office of Civil Rights
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-1000

RE: EPA File No. 01R-12-R4

Dear Mr. DeLeon:

The Alabama Department of Environmental Management ("ADEM") received your notice of Acceptance of Administrative Complaint for investigation in our office on June 19, 2012. This letter serves as our response to that notice.

According to the complaint, OCR is investigating the allegation that ADEM, on September 27, 2011 and on February 3, 2012, violated Title VI of the Civil Rights Act and EPA's implementing regulations by renewing Permit No. 5303 ("Permit") for Perry County Associates, LLC ("Permittee") to continue to operate the Arrowhead Landfill in Perry County and by authorizing a modification to the Permit to expand the disposal area of the municipal solid waste landfill by 169.17 acres. Furthermore, the complaint alleges that the renewal and modification of the Permit will adversely and disparately impact (or have the effect of impacting) African-American residents residing nearby and in the surrounding community.

ADEM approved the renewal and modification of the existing Permit to construct and operate new waste disposal cells within the already permitted boundary of the existing landfill. The facility boundary and the service area of the Permittee did not change. For this reason, the changes being requested to the existing Permit did not require host local government approval pursuant to Ala. Code §22-27-48(a) (2009 Cum. Supp.), so there was no need for the host local government to reconsider siting factors.



Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

Mr. Rafael DeLeon, Director
US EPA Office of Civil Rights
Page 2
July 19, 2012

The Department is confident that the renewal and modification of the Arrowhead permit was conducted in full adherence to all applicable state and federal solid waste requirements and thus is protective of all citizens. This conclusion is consistent with the approval by EPA Region 4 for this facility to accept CERCLA waste generated from the TVA Kingston, Tennessee coal-ash spill. Indeed, the approval by EPA for this facility to accept the coal-ash waste contributed to the need for additional cells and the permit modification.

If you have any questions concerning our response, please do not hesitate to contact Shawn Sibley with our Office of General Counsel at (334) 271-7855.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance R. LeFleur". The signature is fluid and cursive, with the first name being the most prominent.

Lance R. LeFleur
Director

EXHIBIT 5

DECLARATION OF (b) (6), (b) (7)(C)

1. My name is (b) (6), (b) (7)(C). I am of legal age and competent to give this declaration. All of the information herein is based on my own personal knowledge unless otherwise indicated.

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

3. My home is approximately (b) (6), (b) (7)(C) miles from the Arrowhead Landfill (“Landfill”) as the crow flies. See Exhibit A.

4. I was born in Uniontown, lived here as a child, and went to Uniontown High School through the 9th grade. I graduated from Keith High School in Orrville, Alabama. At 17, I moved to Indiana, where I worked as a nurse’s assistant. I had my first child, (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy in Indiana. I returned to Uniontown to take care of my Granddaddy, who had congestive heart failure, and I have lived in Uniontown ever since. I am now (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

5. Like many others in this community, my family has been in Uniontown for generations. I am African American, and my Daddy and Granddaddy were sharecroppers who grew cotton, corn and okra on the Tate plantation, which is nearby, about 2-3 miles from where the Landfill is now. I was born on the (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy plantation, which is also nearby, approximately 3 miles from the Landfill.

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

7. Our homes are located (b) (6), (b) (7)(C), and we are also close to other sources of pollution in Uniontown, including the cheese plant, which is very close to my home. Taken together, these sources of pollution cause me to worry about my own health, as well as that of (b) (6) - Privacy health, my parents, other family members health, our pets and the community.

8. In particular, I live (b) (6), (b) (7)(C) where the coal cars and other trash pass on the way to or from the landfill. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Coal ash has spilled onto the tracks and I have seen the coal ash on and near the tracks. I believe that this dust still remains in the area and kicks up into the air, continuing to pollute our air and water. I believe that the coal ash also gets onto our cars and into our homes, meaning that the pollution is a constant presence in our lives.

9. (b) (6), (b) (7)(C)

. To this day, children walk the tracks and are exposed to coal ash when they walk on the sidewalks.

10. I also go toward or by the Landfill regularly for any number of reasons – to go to church, to visit people – and I see the flies and buzzards nearby. I breathe in the smell and whatever toxics are in the air. Before she died, I would come to see (b) (6) - Privacy regularly, particularly during the summer. She was like a sister to me. My church, the Friendship Missionary Baptist Church, is also down the road from the Landfill, at 6120 Central Mills Road. See Exhibit B.

11. The smell is terrible, and it was not present before the Landfill arrived in Uniontown. I used to live next to where the Landfill currently is located, back before they turned the land into a landfill. There was no odor when I lived in that area.

12. When I pass the Landfill, I see that the trash isn't covered.

13. I am (b) (6), (b) (7) of the Black Belt Citizens for Health & Justice (“Black Belt Citizens”). I have served (b) (6), (b) (7)(C) for more than a year. I have been with Black Belt Citizens for approximately 5 years, when I joined as a member. I also served (b) (6), (b) (7).

14. I was also a member of Concerned Citizens, a group of people in the community who raised concerns about the landfill before it opened.

Membership in Black Belt Citizens

15. When I first heard of the Landfill coming to Uniontown, my understanding was that the proposal was to build a place to put local trash. Then I heard talk about the Landfill taking garbage from 17 counties, and then from 32 states. At some point, I heard about the Landfill taking coal ash, which is why I went to Concerned Citizens. My involvement in Concerned Citizens and then Black Belt Citizens helped me speak out about things that affect me, my family, my neighbors, and the people in Uniontown. Early on, in July of 2011, I went with (b) (6), (b) (7)(C) to a public hearing held by the Arkansas Department of Emergency Management (“ADEM”) in Montgomery to speak about the Landfill. I raised concerns about the health of people and residents on County Road 1. I mentioned that the area near the Landfill had wild animals and that there are farms nearby. I talked about how we have to travel hundreds of miles for health care, and that most people in the area have limited incomes. I asked for someone to come to Uniontown and do tests, and to answer questions about whether what goes in the Landfill is hazardous.

16. Then I also traveled to U.S. Environmental Protection Agency Region 4 (“EPA”) in Atlanta to speak out about the Landfill. I participated in a hearing in Uniontown with EPA about the Landfill and the decision to move coal ash from Kingston, Tennessee to our community. The district attorney in Selma also came

and I attended his meeting with members of the community. We have had hearing after hearing, and it seems that no one will listen. I spoke with ADEM and pled with them to come and see where people live, right across the street from the Landfill.

About Black Belt Citizens

17. Black Belt Citizens is a local grassroots-led organization made up of community members who are working to fight environmental injustice. We are concerned about health and environmental issues affecting our daily lives, and we actively pursue remedies to the threats posed by both the Arrowhead Landfill and the city's overburdened and dysfunctional wastewater treatment system. We are dedicated to making our city and area a better place to live for all of our citizens.

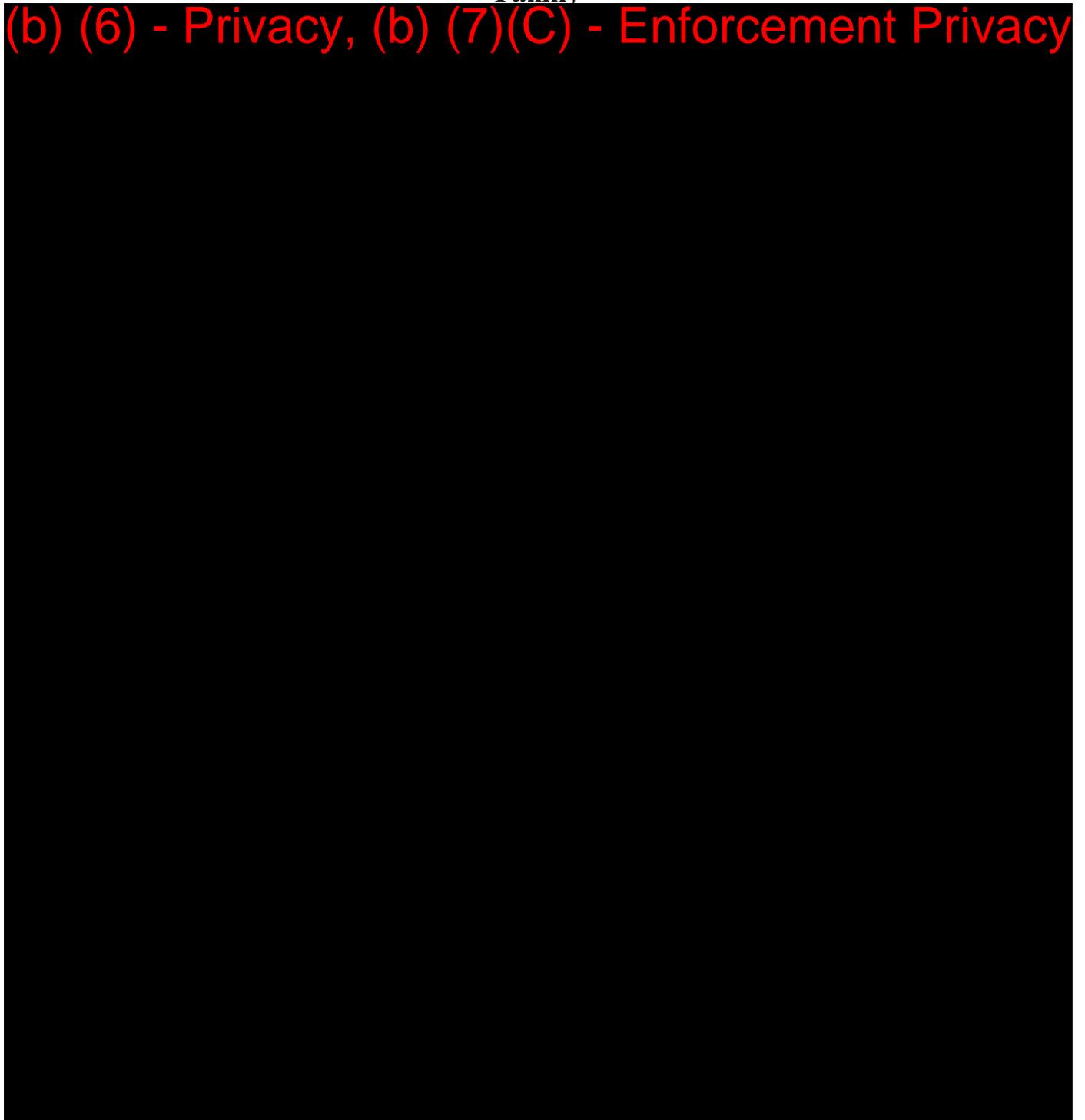
18. Our goals are to rid Uniontown of the coal ash; close the Landfill; educate citizens about how to protect themselves and avoid contaminants; ensure that residents receive comprehensive medical evaluations for levels of toxic chemicals and other problems related to the Landfill; have an independent group regularly test the water, air, and soil for contaminants; and also regularly test livestock, catfish, home gardens, and other agricultural products.

19. We started with at least 30 members, and we have learned over time to speak out for the people who can't speak out for themselves. We also learned to speak to government and the media.

20. Through my involvement in Black Belt Citizens, I have learned how important it is to speak up and to stick together. I have realized that sometimes we don't get heard, but we'll never be heard if we don't speak out on these issues.

Impacts on My Health and Well-Being, and the Health and Well-Being of My Family

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy



with gardening in her indoor flower garden. She lives near the Landfill on Shaw Road.

24. I also developed a (b) (6) - Privacy in the last few years. I (b) (6) - Privacy (b) (6) - Privacy at night. My doctor advised me that I need to take a test but it requires a \$150 down payment and I have not been able to afford the cost.

25. I also have a (b) (6) - Privacy, and I take 3 (b) (6) - Privacy every day. These include (b) (6) - Privacy, and a third medicine.

26. When my son (b) (6) - Privacy lived with me, he had some health issues, including a constant (b) (6) - Privacy.

27. (b) (6) - Privacy has (b) (6), (b) (7)(C) such as a (b) (6), (b) (7)(C) problems.

28. As a result of ADEM's failure to adequately evaluate the impact of Arrowhead Landfill on the health and well-being of Uniontown's residents and the environment, and its failure to attach appropriate permit conditions on the operation of the facility, the permit leaves the adjacent cemetery completely without protection. See Exhibit C_{AIJ} (proximity of cemetery to Landfill).

29. This is a black cemetery. Only black people were buried in this cemetery.

30. My brother, (b) (6) - Privacy died at the age of 2 and is buried at the cemetery adjacent to the Landfill.

31. My great grandparents, the grandparents of my father, (b) (6) - Privacy (b) (6) - Privacy are buried in the cemetery adjacent to the Landfill.

32. My cousin (b) (6) - Privacy is also buried in the cemetery adjacent to the Landfill.

33. When the Landfill was first allowed to open, it is my understanding that the original owners or operators promised to beautify the cemetery, which they failed to do.

34. Instead, the cemetery and some of the graves have been disturbed. I used to visit the graves. My family members had no stone markers but were buried near a pine tree, which was removed. The bushes are all grown in on the graves. I have recently been to the cemetery to visit and can no longer find the graves of my family members. The fact that this cemetery has been disturbed causes me great distress.

Community Health Impacts

35. Given my many years in Uniontown, I know many people in the community, and I also have family here – parents, my sister, cousins, and others.

36. My neighbors, fellow community members, and family members have experienced increases in kidney problems, blood pressure, sleep apnea, skin conditions, asthma, neuropathy, and other health problems over the last few years and to the present. Every day it seems like the health of the community gets

worse. These health problems may be the result of the impact of pollution from the Landfill, and particularly the coal ash, in addition to exposure to other sources of contamination over time, but the failure to require stricter protections of our health in the Landfill's permit is part of the problem.

37. My understanding is that ADEM has done no testing to find out if these health issues in the community may be related to the Landfill.

38. My friend (b) (6) - Privacy recently passed away. She lived (b) (6), (b) (7)(C) from the Landfill. Once the Landfill was operating, she had rats in her trailer and was unable to get rid of them. She did not have this problem before the Landfill arrived. She couldn't sit outside and get fresh air because of the smell and flies. She couldn't stand the smell. One time she was sitting at the porch and passed out. She had nowhere else to go and couldn't move. Even now, you can see coal ash on the side of her home. In the last years of her life she had many of the same health problems that other people in this community are having.

39. Recently, another member of the community, (b) (6) - Privacy passed away. He used to sit on the porch and breathed in the coal ash and other air pollution from the Landfill. He began to have breathing problems which, to my knowledge, he didn't have before the Landfill came to town. The permit did not adequately protect his health.

40. For many people who live near the Landfill, their land has been in their family for years. This land is their homestead. They have returned here to retire, for fresh air, and to have a place, a clean place, for their grandchildren. Living on a piece of land in the country was a point of pride for many in the community.

41. My parents and the parents and grandparents of my neighbors worked hard for their land, and they tried to leave property to their children.

42. The Landfill and ADEM's failure to protect the community have taken away people's ability to relax and enjoy their hard-earned homesteads. They can no longer drink the water or sit on their porch without fear. They can no longer let their grandchildren play in the yard without fear. The smell, the pollution, and the fear affect all aspects of life – whether we can eat from our gardens, hang our clothes, or spend time outside. This isn't right.

43. Living near the Landfill and the mountain of coal ash also is a source of stress. Everyone here is family, and we know that the impact of the Landfill will affect all of us sooner or later. Trains came by my house, and we've experienced an increase in both dust and flies. I talk to people every day who are sick.

44. The impact is all the worse because people have no money here. I graduated from high school, but this is a poor and undereducated neighborhood. ADEM should have been doing its job by protecting our health.

45. For people on a fixed income, having to get an air conditioner and sit inside costs a lot. The electricity bill is a big part of their paycheck. It's an impact. Buying bottled water costs a lot. It's also an impact.

46. What about the people whose parents spent their hard-earned money to buy this land and moved home to retire? They now have coal ash and property that isn't worth anything. They can't sell it or leave it to their kids. I picked cotton, and I know it's hard to get this property.

47. When we have a health problem in this community, it's also not easy to get care. To see a specialist, we might have to go hours away to Birmingham, which is expensive and time consuming. The community now has serious problems – kids have frequent nosebleeds, older people have kidney problems. This didn't happen until recently, and it's taking its toll.

48. I have continuing concerns about ADEM's lack of oversight of the Landfill, not only because of the arrival of coal ash in the past and the continuing effects of that coal ash, but also because I don't know what is going into the Landfill today and have no assurance that there won't be more coal ash, especially with coal plants closing down and the government wanting to find places for coal

ash. We worry that the Landfill could be accepting other hazards to our health. I want ADEM to do its job.

49. I believe that this Landfill and the coal ash in the Landfill were put here without consideration of the health of the community because it is a poor black neighborhood and decision-makers thought that people would be afraid to speak up. I also believe the re-permitting and the modification was done without any protections, for the same reason. Even if people did speak up, they wouldn't be heard. I also have concerns that corruption of our local public officials is involved. So no one protects us.

50. I am concerned that county and state officials will allow more coal ash to come to Uniontown. Even basics, such as a fence around the perimeter of the landfill, are lacking, and there aren't protections for people's health and our children. Wildlife, dogs and even little children can wind up on the landfill property.

51. This community operates like it was America in the 1950s. I don't want my older sons to stay in Uniontown because of how they are treated.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed in Uniontown, Alabama on February __ 2015

(b) (6), (b) (7)(C)



EXHIBIT A

(b) (6), (b) (7)(C)



EXHIBIT B

(b) (6), (b) (7)(C)

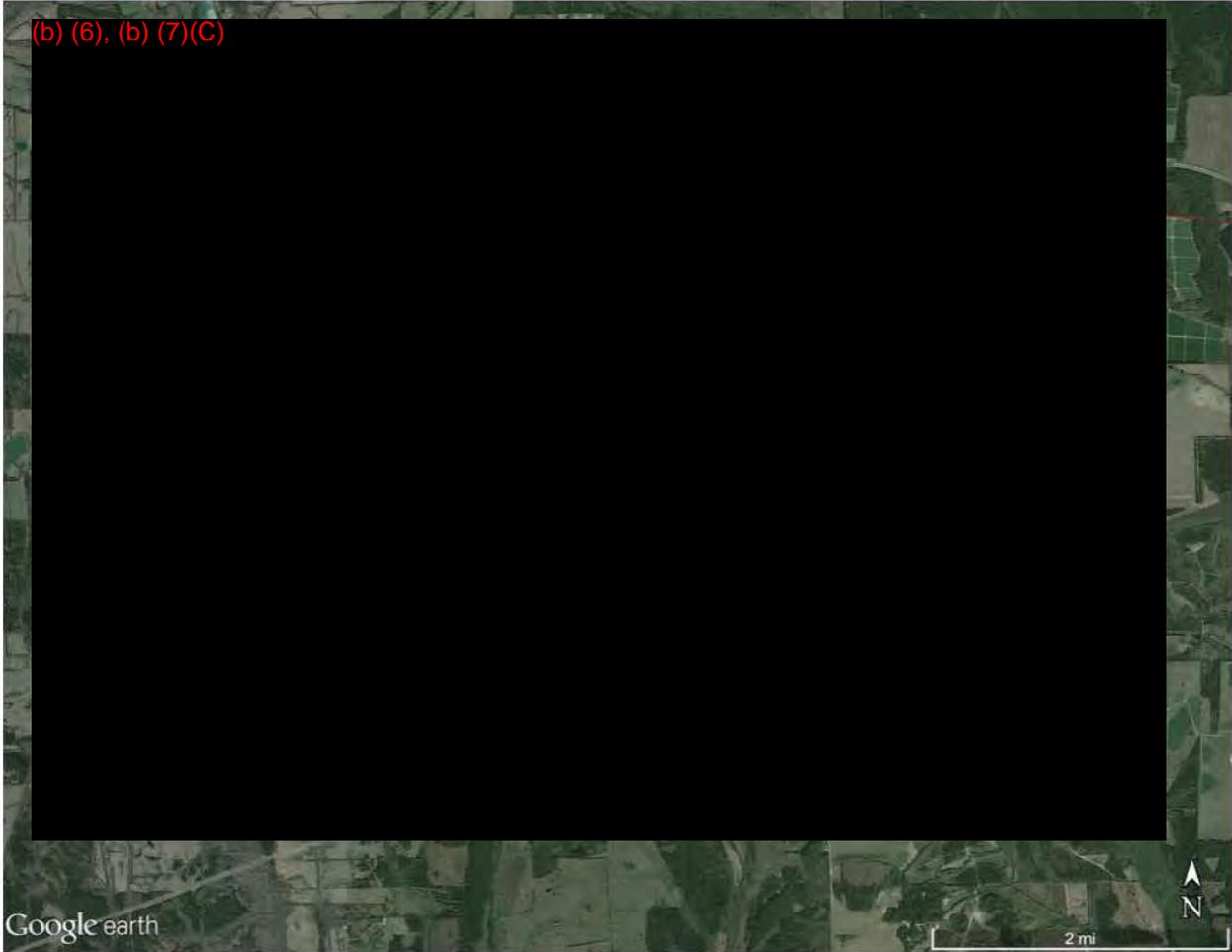


EXHIBIT 6

MICHAEL D. SMITH
CLAY STAGGS
AMANDA MULKEY
JAIME W. CONGER



TELEPHONE
(205) 409-3140
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SMITH & STAGGS, LLP

701 22ND AVENUE, SUITE 1
TUSCALOOSA, AL 35401

WRITER'S EMAIL:
MSMITH@SMITHSTAGGS.COM

November 19, 2015

(b) (6), (b) (7)(C), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7)(C) individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7)(C), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7)(C) individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

Re: *Black Belt Citizens Fighting for Health & Justice*
Facebook Page

(b) (6), (b) (7)(C)

As you are all aware, I represent Green Group Holdings, LLC ("Green Group Holdings"), the ultimate owner of Arrowhead Landfill in Perry County, Alabama.

It has come to our attention that over the past several weeks, the Facebook page administered by *Black Belt Citizens Fighting for Health & Justice* has published the following statements regarding Arrowhead Landfill:

November 18, 2015: Continued onslaught, pollution, exploitation, & crimes against our Black community; unpermitted discharges leaving from ***toxic Arrowhead Landfill*** & destroying property values; increasing health threats, stress, & violence; these oppressive actions cause poverty & discrimination. The ***Arrowhead Landfill is also desecrating the nearby Black cemetery***. Esther Calhoun, President of Black Belt Citizens, says "I feel like I'm in prison, we're ***suffocated by toxic pollution & extreme poverty***. Where are my freedoms? This is an environmental injustice & it's happening in Uniontown & everywhere" (Emphasis added.)

November 13, 2015: Uniontown residents continue to be upset over the actions of the Arrowhead Landfill, over the past 3 days there has been another unpermitted

November 19, 2015

Page 2

(illegal) discharge leaving ***Green Group Holdings toxic landfill***. This has been occurring for years and ADEM has never enforced their permit limits to stop this problem. The majority of the ***residents around the landfill are worried about their water, air, property values, families' health, and the nearby sacred cemetery that is also being desecrated by the landfill***. (Emphasis added.)

November 13, 2015: Black Belt Citizens demand no more coal ash in Uniontown! Black Belt Citizens demand ADEM and EPA enforce their laws to prevent further discrimination against the community. ***The landfill is poisoning our homes and destroying our Black cemetery (sic)***. THIS IS ENVIRONMENTAL INJUSTICE! Where's our justice? (Emphasis added.)

November 2, 2015: Coal ash landfills, like ***Arrowhead Landfill, continue to leak toxins into rivers, streams, and groundwater***, potentially affecting the quality of drinking water. This toxic waste effects everyone, please watch this short film about the problems at Arrowhead. (Emphasis added.)

October 23, 2015: Arrowhead Landfill and its owners, ***Green Group Holdings, neglects laws, peoples' rights, and our culture. First, corruption and unlawful actions get the landfill here***. Then, 4 million tons of coal ash and garbage from 33 states. Now, Arrowhead landfill and ***Green Group Holdings are trespassing and desecrating a black cemetery***. Black lives matter! Black ancestors matter! (Emphasis added.)

We have likewise discovered that a similar statement can be found on your website "Projects" page at <http://blackbeltcitizens.wix.com/blackbeltcitizens#!projects/c21kz> where the following statement regarding Arrowhead Landfill is made:

Arrowhead Landfill, located on south Perry County Road 1 near Uniontown, Alabama, ***poses a serious health and environmental threat*** to our area. ***Built on an unsuitable site*** over our aquifer, it now contains almost 4 million tons of ***toxic coal ash*** from the Kingston TN spill. Stormwater run-off and ***deliberate discharges from the landfill reveal high levels of arsenic*** which, along with ***toxic dust and noxious odors***, are impacting residents, their livestock, and the garden produce on which they depend.

These four posts and statement, and particularly the highlighted language, are published without any factual basis. As I am sure you can understand, we view the above posts and statement to be false, defamatory, misleading and damaging. We have referred this matter to our corporate

(b) (6), (b) (7)(C)

November 19, 2015

Page 3

attorneys for review and to evaluate the appropriate legal action to be taken in response to your unfounded and reckless statements.

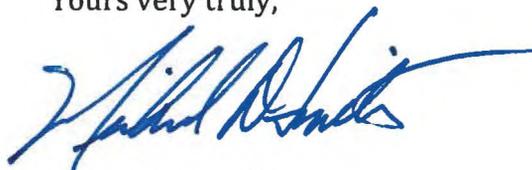
Given the nature of the posting via electronic media, we would request that you immediately delete these four posts from your Facebook page and affirmatively state that the references to Green Group Holdings and Arrowhead Landfill in your prior posts were false and misleading. We also request that you immediately cease and desist from making false, erroneous statements about Green Group Holdings and Arrowhead Landfill.

It is imperative we get an understanding from you and your affiliates that you (and they) will comply with this most reasonable request. Please confirm this to me in writing, within five (5) calendar days of the date of this letter. Otherwise, I shall forward the fact of your non-compliance to our corporate attorneys in order that they might consider your actions (or failure to act) as they evaluate the courses of action best suited to protect my clients' interests.

Further, consider yourselves put on **notice to preserve all documents** as broadly defined in Rule 34 of the *Federal Rules of Civil Procedure*, including all electronically stored documents and emails in your possession, custody or control, regardless of origin, author or source, relating to, arising from or disseminating the allegations made by you and quoted above or evidencing any cooperation, coordination and/or collaboration.

Please give this matter your immediate attention and feel free to contact me should you have any questions about anything contained herein. Your reply should be directed to me at the address in the above letterhead.

Yours very truly,



Michael D. Smith

MDS/

EXHIBIT 7

MICHAEL D. SMITH
CLAY STAGGS
AMANDA MULKEY
JAIME W. CONGER



TELEPHONE
(205) 409-3140
FACSIMILE
(205) 409-3144

SMITH & STAGGS, LLP

701 22ND AVENUE, SUITE 1
TUSCALOOSA, AL 35401

WRITER'S EMAIL:
MSMITH@SMITHSTAGGS.COM

March 10, 2016

(b) (6), (b) (7)(C), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7)(C), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

Re: *Black Belt Citizens Fighting for Health & Justice*
Facebook Page

(b) (6), (b) (7)(C):

As you are all aware, I represent Green Group Holdings, LLC ("Green Group Holdings"), the ultimate owner of Arrowhead Landfill in Perry County, Alabama.

On November 19, 2015, I notified you that several statements had appeared on the Facebook page administered by *Black Belt Citizens Fighting for Health & Justice*, which were regarded as publication of libelous statements. We further advised you that the publication of those statements had been made without any factual basis and were considered to be to be false, defamatory, misleading and damaging. We went on to demand that you immediately delete these four posts from your Facebook page and affirmatively state that the references to Green Group Holdings and Arrowhead Landfill in your prior posts were false and misleading. We also demanded that you immediately cease and desist from making false, erroneous statements about Green Group Holdings and Arrowhead Landfill.

Since that time, you have continued to make such libelous, false, defamatory, misleading and damaging statements. Examples of those statements follow:

November 20, 2015:

Pictures of the New Hope Cemetery, neighbor of Arrowhead Landfill. The photos

(b) (6), (b) (7)(C)

March 10, 2016

Page 2

are of possible trespass and recent bulldozing done by the landfill, some of the graves are unable to be located, family members are upset over their **sacred space being violated, damaged, & desecrated.**

Arrowhead Landfill is on the site of an older plantation. The New Hope Cemetery is the final resting place of former workers, indentured servants, and slaves of the plantation.

Recent actions by the landfill and improper enforcement from the state constantly remind Uniontown's residents of their past life full of violence, hate, & oppression. (Emphasis added.)

December 5, 2015:

"We are tired of being taken advantage of in this community." said Uniontown resident (b) (6), (b) (7)(C), who is a member of the group Black Belt Citizens Fighting for Health and Justice. "The living around here can't rest because of the **toxic material** from the coal ash **leaking into creeks and contaminating the environment**, and the deceased can't rest because of **desecration of their resting place.**" (Emphasis added.)

January 11, 2016:

Multiple pollution sources impact residents including Arrowhead Landfill which stores over 4 million tons of toxic coal ash. This **landfill is experiencing unpermitted amounts of water runoff leaving its site and entering neighboring property.** Also, the landfill may have committed **illegal trespass & desecration of an adjacent Black cemetery.** The owners of this landfill, **Green Group Holdings, own and operate many extreme landfills around the US.**

...

This event is created to unite citizens across Perry County and Uniontown, Alabama's Black Belt, and the Southeast US to accomplish the following:

...

- Identify communities' needs against environmental injustices including **illegal pollution**, coal ash, corporate interests for **toxic landfills**, and "**extreme energy waste sites**" (Emphasis added.)

January 14, 2016:

Join us this Saturday in Uniontown for Building Bridges for Justice as we focus on the **toxic, 4 million tons of coal ash** sitting in the Arrowhead Landfill. The **landfill's pollution problems are influencing the decrease of property values while increasing health concerns.** This extremely large landfill owned by Green Group Holdings has been reportedly **trespassing and desecrating a nearby Black**

(b) (6), (b) (7)(C)

March 10, 2016

Page 3

Cemetery. These impacts are very discriminatory and we feel our civil rights are being violated by environmental racism at all levels. (Emphasis added.)

February 25, 2016:

"Its a landfill, its a tall mountain of coal ash and it has affected us. **It affected our everyday life.** It really has done a lot to our freedom. **Its another impact of slavery.** ...Cause we are in a black residence, things change? And you can't walk outside. And **you can not breathe. I mean, you are in like prison.** I mean, its like **all your freedom is gone.**

As a black woman, our voices are not heard. EPA hasn't listened and ADEM has not listened. Whether you are white or black, rich or poor, it should still matter and **we all should have the right to clean air and clean water.** I want to see EPA do their job."

Powerful words from our (b) (6), (b) (7)(C). (Emphasis added.)

March 1, 2016:

The **toxic Arrowhead Landfill** continues to hurt/violate/oppress the community with the **desecration of the adjacent cemetery, the constant run-off of contaminated water, the bad odors and smells, and the depression of property value.**

Watch this small video by Black Belt Citizens member as he records run-off at **toxic Arrowhead.** Black Belt Citizens stand with all communities impacted by toxic coal ash and extreme energy wastes. We stand united with all communities suffering from oppressive and discriminatory policies and practices. We stand with all people who fight for health and justice. (Emphasis added.)

This is your final notice. Demand is hereby made that you **immediately delete** the four posts from your Facebook page which were the subject of our November 19, 2015 letter - as well as those Facebook posts listed above - and **affirmatively state** on that page that they have been deleted and that the references to Green Group Holdings and Arrowhead Landfill in all deleted posts were false and misleading. We also request that you immediately cease and desist from making further libelous, false, erroneous and damaging statements about Green Group Holdings and Arrowhead Landfill. It is imperative we get a clear understanding from you and your affiliates that you (and they) will comply with this most reasonable request. Please confirm this to me in writing, within five (5) calendar days of the date of this letter. If you fail to comply with this demand, our clients will take the course of action best suited to protect their interests.

Further, consider yourselves put again have been placed on **notice to preserve all documents** as broadly defined in Rule 34 of the *Federal Rules of Civil Procedure*, including all electronically stored documents and emails in your possession, custody or control, regardless of

(b) (6), (b) (7)(C)

March 10, 2016

Page 4

origin, author or source, relating to, arising from or disseminating the allegations made by you and quoted above or evidencing any cooperation, coordination and/or collaboration.

Please give this matter your immediate attention and feel free to contact me should you have any questions about anything contained herein. Your reply should be directed to me at the street or electronic address in the above letterhead.

Yours very truly,



Michael D. Smith

MDS/

EXHIBIT 8

Marianne Engelman Lado

Subject: FW: Black Belt Citizens Fighting for Health & Justice

From: Mary Schaeffer (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

Sent: Tuesday, March 15, 2016 4:22 PM

To: 'Michael Smith' <msmith@smithstaggs.com>; (b) (6), (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy (b) (6), (b) (7)(C) (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy (b) (6), (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

Cc: 'Ernest Kaufmann' <ekaufmann@gghcorp.com>; 'Joy Hammonds' <jhammonds@gghcorp.com>

Subject: RE: Black Belt Citizens Fighting for Health & Justice

Mr. Smith:

We have received your letter dated March 10, 2016. The posts in question were written and posted on our Facebook page without the prior knowledge or approval of the four officers of Black Belt Citizens Fighting for Health and Justice. These posts are no longer visible on our Facebook page.

We are consulting with our attorneys regarding your requests. We or they will respond to you as soon as possible.

Sincerely,

(b) (6), (b) (7)(C)

From: Michael Smith [<mailto:msmith@smithstaggs.com>]

Sent: Thursday, March 10, 2016 4:57 PM

To: (b) (6), (b) (7) (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy (b) (6), (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy (b) (6), (b) (7) (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy (b) (6), (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

Cc: Ernest Kaufmann <ekaufmann@gghcorp.com>; Joy Hammonds <jhammonds@gghcorp.com>

Subject: Re: Black Belt Citizens Fighting for Health & Justice

Please see the attached letter dated March 10, 2015, written on behalf of Arrowhead Landfill and Green Group Holdings, LLC and its affiliates.

Mike Smith

On 11/19/15, 11:20 AM, "Michael Smith" <msmith@smithstaggs.com> wrote:

Please see the attached letter written on behalf of Green Group Holdings, LLC.

Michael D. Smith
Smith & Staggs, LLP
701 22nd Avenue, Suite 1
Tuscaloosa, AL 35401

Telephone 205.409.3140
Facsimile 205.409.3144
msmith@smithstaggs.com

(b) (6), (b) (7)(C)

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Thank you.

EXHIBIT 9

Marianne Engelman Lado

Subject: FW: Black Belt Citizens Fighting for Health & Justice

From: Michael Smith [<mailto:msmith@smithstaggs.com>]

Sent: Thursday, March 17, 2016 2:17 PM

To: (b) (6), (b) (7) (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

Subject: Re: Black Belt Citizens Fighting for Health & Justice

(b) (6), (b) (7)

Thank you for the update. If you are represented or would prefer that I communicate with someone else, please provide his/her name and contact information. Otherwise, I will simply suggest topics for discussion. I am also quite interested in whether you are speaking for you and your sister, (b) (6), (b) (7)(C), Black Belt Citizens Fighting for Health & Justice, all of them or some of them.

One of the things I am assuming you are looking for is a complete release from GGH and Arrowhead and some assurance that you will not be subjected to litigation. This would come about only as the result of a comprehensive settlement agreement that would require significantly more than a simple take down of the libelous material and retraction of those statements. I will be happy to discuss that in more detail with you or your counsel, but time is of the essence and we do not wish to wait past tomorrow to reach at least an agreement in principle.

I am in somewhat a quandary as to how to proceed because you have hinted at being represented but not indicated that you actually are. I have already started drafting an outline for such an agreement and a proposed press release. I am reluctant to forward those to you and discuss them with you if you are represented by counsel but would be happy to begin that process now if you are not. There are ethical limitations placed upon my communication with you if you are represented and hence my reluctance to be more specific.

Please let me hear from you or your attorney at the very earliest possible time.

Mike

Michael D. Smith
Smith & Staggs, LLP
701 22nd Avenue, Suite 1
Tuscaloosa, AL 35401

Telephone 205.409.3140
Facsimile 205.409.3144
msmith@smithstaggs.com

(b) (6), (b) (7)(C)

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Thank you.

From: (b) (6), (b) (7)(C) (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy >
Date: Thursday, March 17, 2016 at 1:31 PM
To: Michael Smith <msmith@smithstaggs.com>
Subject: Black Belt Citizens Fighting for Health & Justice

We are seeking the advice of counsel, and we or they will provide a response to your letter as soon as possible once we have discussed the issues with them.

(b) (6), (b) (7)(C)

From: Michael Smith [<mailto:msmith@smithstaggs.com>]
Sent: Wednesday, March 16, 2016 9:48 AM
To: (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy
Subject: Black Belt Citizens Fighting for Health & Justice

Please see the attached letter written on behalf of Green Group Holdings, LLC.

Michael D. Smith
Smith & Staggs, LLP
701 22nd Avenue, Suite 1
Tuscaloosa, AL 35401

Telephone 205.409.3140
Facsimile 205.409.3144
msmith@smithstaggs.com

(b) (6), (b) (7)(C)

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Thank you.

EXHIBIT 10

MICHAEL D. SMITH
CLAY STAGGS
AMANDA MULKEY
JAIME W. CONGER



TELEPHONE
(205) 409-3140
FACSIMILE
(205) 409-3144

SMITH & STAGGS, LLP
701 22ND AVENUE, SUITE 1
TUSCALOOSA, AL 35401

WRITER'S EMAIL:
MSMITH@SMITHSTAGGS.COM

March 16, 2016

(b) (6), (b) (7)(C), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6), (b) (7), individually and
as a member and officer of Black Belt
Citizens Fighting for Health and Justice

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

Re: *Black Belt Citizens Fighting for Health & Justice*
Facebook Page

Dear (b) (6), (b) (7)(C)

Thank you for your email of March 15, 2016. My client and I appreciate your acknowledgement (1) of the nature of the posts that have been taken down and (2) that they were written and posted by others. While it seems you could have taken this step following my letter in November of last year and also put an end to the practice of providing others your platform to publish such falsehoods, we are pleased that you are taking that step now. If you are also speaking for (b) (6), (b) (7)(C), please confirm that. Your confirming email should include an affirmative statement that you have specific authority from each of them to make that representation or that you have asked that they send me an email similar to your own.

I assume that the conversations you are having with your counsel revolve around the posting of a repudiation of these prior posts as being "false and misleading". I believe that you will find that such is required under the law in order to avoid the imposition of punitive damages but your own counsel can better provide advice on that issue. The five (5) days allowed in my letter of March 10, 2016, has expired, I will expect a repudiation or retraction to be published on or before Friday, March 18, 2016.

While speaking to your attorney, you should raise one additional point that has arisen as a result of your disclosure that the "... posts in question were **written and posted** on our Facebook page **without the prior knowledge or approval of the four officers** of Black Belt Citizens Fighting for Health and Justice." Demand is also made upon you to disclose the identity and contact information for the person or persons who did write and post the libelous material you have now removed from your Facebook page. You and your organization would have been required to authorize such a person to have access to your Facebook account in a manner to make

(b) (6), (b) (7)(C)

March 16, 2016

Page 2

those posts. We will be making a similar demand of them as has been made on you. If you are unaware of the identity of the specific individual writing and posting this libelous material please provide the names and contact information for **all** persons having authority to post to your Facebook account on behalf of your organization or with whom you have communicated regarding your Facebook account. This information is the sort of thing we will be asking for in discovery in the litigation that will surely ensue if you fail to comply. Again, please provide this information by Friday of this week.

Pending confirmation that the repudiation or retraction has been satisfactorily made and that the same result has been obtained from those acting on your behalf, please continue to consider yourselves **on notice to preserve all documents** as broadly defined in Rule 34 of the *Federal Rules of Civil Procedure*, including all electronically stored documents and emails in your possession, custody or control, regardless of origin, author or source, relating to, arising from or disseminating the allegations made by you and quoted above or evidencing any cooperation, coordination and/or collaboration.

There is one additional thing I would ask of you beyond the demands already made and this time it is simply a request. I would ask that you remove the block you have made against Arrowhead Landfill posting comments on your Facebook page. We would not abuse this show of good will on your part and will limit our posts to factual information which we can document. This will allow a vehicle for an exchange of information on the various issues that may arise concerning the landfill and its operations. Hopefully that will mark the beginning of an improved relationship leading to a free exchange of information between us. My client is willing to do that if you and your organization are.

Please give this matter your immediate attention and feel free to contact me should you have any questions about anything contained herein. Your reply should be directed to me at the street or electronic address in the above letterhead.

Yours very truly,



Michael D. Smith

MDS/

EXHIBIT 11

Law Office
DAWSON LAW, LLC.

William M. Dawson

bill@billdawsonlaw.com

1736 Oxmoor Road
Birmingham, AL 35209

(205) 795-3512
(205) 870-7763 FAX
(b) (6) Privacy [REDACTED]

March 25, 2016

Mr. Michael D. Smith
Smith & Staggs, LLC
701 22nd Avenue, Suite 1
Tuscaloosa, AL 35401

Re: Black Belt Citizens Fighting for Health & Justice

Dear Mr. Smith:

This response is provided jointly for the four individuals to whom you have written claiming defamatory statements against the operation of the Perry County landfill. This is a singular response, as your allegations are primarily directed at a very loose unorganized association, the Black Belt Citizens Fighting for Health and Justice.

The Facebook page, like all others, has been available for any citizens to post comments. I understand that some matters have been removed as a showing of good faith, but none of the four people are responsible for what others may have posted. They have made an effort to comply with your demands, but are not going to make statements which are contrary to their honest beliefs. They have experienced dust and have legitimate concern over damage to groundwater and streams.

As we all are aware, the truth is a defense to claims of libel or defamation. Also, citizens have a constitutional right to express personal opinions voiced in good faith. There are legitimate public issues involved in the movement and storage of millions of tons of coal ash, and these people have the same concerns as the residents of Tennessee and other states which have refused such storage.

I cannot see how a claim can be made that they do not have legitimate concerns over the loss of property values or stress and health issues. There is also an ongoing issue of the desecration of the historical cemetery. They certainly have the right to complain about actions or inactions by ADEM and EPA. There has been an ADEM sanction noted for non-compliance with applicable pre-treatment standards in discharging wastewater in

2015, and there is scientific evidence of highly toxic levels of arsenic in stormwater runoff. Public discourse about these two governmental agencies may well involve mention of the landfill. Water does flow from the landfill, coal ash is toxic and there is a virtual mountain of it now.

My clients do not want to become involved in litigation over past statements, though they would certainly file typical actions for damages, perhaps for themselves and others, should they become embroiled in litigation. I do believe that initiation of a suit against my clients would bring enormously more publicity than what would transpire as a result of the Facebook page.

Rather than the matters remaining in an administrative posture with the governmental agencies, there would be public litigation over any dangers of millions of tons of coal ash, why it always seems to end up in communities like Alabama's Black Belt, why this David and Goliath litigation has been brought, and other related issues. I can certainly envision involvement by environmental groups, public interest organizations, and the *pro bono* efforts of some major law firms. In addition, both local and national media would likely consider the matter quite newsworthy. It may be that Perry County could become the focal point for national discussion of what to do with residue from coal burning power plants. I have been rather amazed at the national media exposure we have received following our litigation against the private probation industry here.

Having dealt with my clients, you are likely aware of the fragile nature of their present circumstances. They are hardly ideal targets for a damage action, and the inference can be made that any litigation would have other purposes. Establishing damage would allow broad discovery as to assets, income and expenses, as well as consideration of any other factors which might have affected the perception of the coal ash industry in a negative way.

We are prepared to defend any libel or defamation action against these four individuals, but would hope that such does not become necessary. You have acknowledged their actions in removing some items from the Facebook page. They certainly cannot control what others in the community might do or say, but will keep any comments within the confines of proper discussion.

Sincerely,

A handwritten signature in cursive script that reads "Bill Dawson".

William M. Dawson

WMD/hs

EXHIBIT 12

MICHAEL D. SMITH
CLAY STAGGS
AMANDA MULKEY
JAIME W. CONGER



SMITH & STAGGS, LLP
701 22ND AVENUE, SUITE 1
TUSCALOOSA, AL 35401

TELEPHONE
(205) 409-3140
FACSIMILE
(205) 409-3144

WRITER'S EMAIL:
MSMITH@SMITHSTAGGS.COM

March 30, 2016

Sent via electronic mail to: bill@billdawsonlaw.com

Mr. William M. Dawson, Esq.
DAWSON LAW, LLC
1736 Oxmoor Road
Birmingham, AL 35209

Re: *Green Group Holdings, LLC, et al. vs. Mary B. Schaeffer, et al.*
Our file no.: 44133.0025

Dear Mr. Dawson:

Thank you for your letter of March 25, 2016.

While Black Belt Citizens Fighting for Health and Justice (“Black Belt”) may have been portrayed to you as a loose, unorganized organization, the facts would not appear to support that assertion. This organization has officers (your clients), an online presence through both a website and their Facebook page, has sought and obtained the opportunity to have its representatives testify before the United States Commission on Civil Rights, is purportedly seeking 501(c)(3) status and organizes/hosts events on a regular basis on a variety of topics but most notably regarding Arrowhead Landfill.

Facebook has rules that govern the postings on sites sponsored by non profit organizations such as Black Belt. Postings by the organization, such as those my client has complained of, can only be made by an administrator and an administrator must be given that authority by those who have created the page, i.e. the organization. Let me be clear the only posts which my clients are challenging are those made by the administrator on behalf of Black Belt as opposed to the “comments” posted by strangers to the organization.

The posts complained of are not simply “personal opinions voiced in good faith” related to “legitimate public issues”, my clients would welcome such discourse from anyone. Rather, they allege the intentional, improper disposal of hazardous or toxic waste, a poisoning of the

Mr. William M. Dawson, Esq.
March 30, 2016
Page 2

environment and desecration of a cemetery, all felonies in Alabama and all amounting to libel *per se* in this state. They also invoke images of slavery in depicting the relationship between the community and my client.

Truth is a defense to libel, however, in this instance the truth is that there is no evidence that Green Group or Arrowhead have done any of the things alleged by your clients. There are tens of thousands of pages of independent testing and CQA reports documenting that there has, in fact, been no release of any toxic or hazardous material by my clients into the air, groundwater or surface water and the proper construction and operation of the landfill. There is not one shred of evidence to the contrary. As for any tests done by [REDACTED] ADEM evaluated the data she provided and responded to her as follows:

“The additional information provided by you was reviewed by the Department’s Water Quality program and they have indicated no definitive conclusions could be drawn based on the information provided. Should you have additional data, including methodology and quality control/quality assurance procedures utilized, the Department would be interested in receiving it.”

[REDACTED] apparently agreed as in her follow up to ADEM she said:

“I would be **surprised and rather dismayed** if you took my data as a basis for any specific action, and would hope that the water division might follow up on its own.

“When I have more complete information, I would be happy to share it.” (Emphasis added.)

That was September 8, 2014, and she has to date provided nothing more.

My clients are seeking many forms of bulk waste streams for disposal at Arrowhead, including coal ash. They are also seeking approval of permits to build and/or operate disposal facilities in other states. The statements by your clients are widely distributed and re-published through the webpages, Facebook pages and twitter accounts of others who are opposed to coal mining, coal combustion, coal ash, Green Group’s various permit applications or are in competition with Green Group. Had your clients limited themselves to “personal opinions voiced in good faith” related to “legitimate public issues”, there would be nothing inflammatory, sensational or dramatic enough to be deemed newsworthy and my clients may not have been damaged. As a result of the false, malicious, sensational and libelous postings and statements that were made, my clients compensatory damages have soared into the millions of dollars.

Attached are a draft Retraction and Press Release and a draft Settlement Agreement with your clients. These represent an offer of settlement and compromise and should be maintained as

Mr. William M. Dawson, Esq.
March 30, 2016
Page 3

confidential. Please review them with your clients¹ and advise their response by the close of business on Friday, April 1, 2016. We will consider accepting these terms from less than all of the potential defendants.

Yours very truly,



Michael D. Smith

MDS/
Attachments as noted

¹ Among your clients, the “administrator” [or the one or more administrator(s) or person(s) most directly involved with the administrator(s)] may be more culpable than the others and thereby have interests in conflict with the remaining officers requiring separate counsel for the less culpable persons.

PRESS RELEASE and RETRACTION
Black Belt Citizens Fighting for Health & Justice

You may have noticed that several articles previously posted on the *Black Belt Citizens Fighting for Health & Justice* Facebook Page have been removed recently. They were removed because they and their content were false and misleading with respect to Arrowhead Landfill and its owner, Green Group Holdings, LLC (“Green Group”).

Among other things, the posts that were taken down alleged that Green Group and/or Arrowhead Landfill:

- operated as a toxic landfill;
- was poisoning the Uniontown community;
- operated in a manner that was injurious to the community’s health;
- had trespassed upon and desecrated the historic New Hope Church Cemetery;
- continues to leak toxins into rivers, streams and groundwater;
- deliberately discharged water from the landfill property into streams and across its neighbors’ property that contained high levels of arsenic;
- is built on an unsuitable site;
- poses a serious health and environmental threat to the Uniontown community;
- is operated in a corrupt manner;
- is the equivalent of modern day slave owners; and,
- acted so as to falsely imprison its neighbors by denying them clean air and water.

We have no specific knowledge or verifiable evidence that any of these allegations are true and it was reckless to allow such inflammatory and unsubstantiated postings on the website.

When we saw these allegations posted on the Facebook page, we knew there was no evidence that any of them were true and in fact we knew most of them were false. Because we acted recklessly and allowed others from outside our community and with their own agenda to act as administrators of our Facebook account, they published the material without our consent or knowledge. Even as we recognized the misrepresentations and we were being falsely quoted, we did nothing to stop the false and misleading nature of their posts, or limit their access to the Facebook page until now.

We could have taken this action when demand was first made on us by Green Group in November of last year but we did not. Three additional months of continued defamatory and damaging posts were allowed to occur and for that we are sorry. The statements we allowed to be posted on Facebook utilizing our name and platform were false, misleading, defamatory and damaging to Green Group as they attempted to conduct a legal business in our community. They have suffered greatly because of our actions and failure to act, and we admit our wrongdoing and offer Green Group, Arrowhead Landfill, and all affiliated with them our sincerest apologies.

Green Group has been an excellent corporate citizen since purchasing the landfill in December of 2011. They have participated in school supply and support programs, job fairs, cleaned up public parks, provided meals and Christmas gifts to the elderly, purchased a sound system for the high school gymnasium, purchased computers for our police department, and worked to clean up

(as opposed to desecrating) and assure perpetual care for the historic New Hope Church Cemetery located adjacent to the landfill.

GENERAL RELEASE AND SETTLEMENT AGREEMENT

This General Release and Settlement Agreement (“Agreement”) is effective the date on which this Agreement has been fully executed by all parties, by and between Green Group Holdings, LLC, a Georgia limited liability company (“GGH”) and Howling Coyote, LLC, a Georgia limited liability company (“HC”) (collectively “Plaintiffs”) on one hand, and (b) (6), (b) (6), (b) (7)(C) (collectively the “Defendants”), on the other hand (collectively, “the Parties”).

WHEREAS, on November 19, 2015, Defendants were placed on notice that Plaintiffs deemed certain posts made to the Facebook page of Black Belt Citizens Fighting for Health and Justice (“Black Belt”), an unincorporated association, composed of Defendants, both of whom served as officers, and others, to be libelous in that they were false, defamatory, misleading and damaging to Plaintiffs; and

WHEREAS, on March 10, 2016, Defendants were again placed on notice that Plaintiffs deemed certain additional posts made between November 19, 2015 and March 10, 2016 to the Facebook page of Black Belt Citizens Fighting for Health and Justice (“Black Belt”), an unincorporated association, composed of Defendants, both of whom served as officers, and others, to be libelous in that they were false, defamatory, misleading and damaging to Plaintiffs; and

WHEREAS, in each of said letters demand was made that the libelous posts be taken down and a retraction published; and

WHEREAS, the Parties now desire to resolve fully and finally any and all disputes between Plaintiffs and Defendants, known and unknown, accrued and unaccrued, existing up to and including the date on which this Agreement is fully executed by the Parties;

The Parties hereby knowingly, willingly, voluntarily, freely, with the advice of counsel and without any coercion enter into and agree to the following Agreement:

1. In consideration of the provisions and requirements of this Agreement and the further sum of One Hundred and no/100 DOLLARS (\$100.00) in hand paid, the sufficiency of which is hereby acknowledged, Plaintiffs do hereby irrevocably and unconditionally release Defendants from any and all causes of action, demands or claims, known or unknown, accrued or unaccrued, arising out of or relating in any manner whatsoever to their false, misleading, inflammatory and libelous statements made or recklessly allowed to be published by Defendants concerning Plaintiffs and/or Arrowhead Landfill which Plaintiffs have presently or may have in the future arising out of any facts or events which took place on or prior to the date this Agreement is fully executed by the Parties, including, but not limited to, any and all claims, known or unknown, accrued or unaccrued, arising out of or relating to any alleged injuries sustained by Plaintiffs as a result of the false, misleading, inflammatory and libelous statements made or recklessly allowed to be published by Defendants concerning Plaintiffs and/or Arrowhead Landfill, which could have been asserted by Plaintiffs against the Defendants. This is

General Release and Settlement Agreement

Green Group Holdings, LLC, et al. and (b) (6), (b) (7)(C), et al.

a complete, final, full, absolute and unconditional release of any and all claims Plaintiffs have or may have against Defendants arising out of or relating in any manner whatsoever to the false, misleading, inflammatory and libelous statements made or recklessly allowed to be published by Defendants concerning Plaintiffs and/or Arrowhead Landfill, up to and including the date this Agreement is fully executed by the Parties.

2. In consideration of the provisions and requirements of this Agreement and the further sum of One Hundred and no/100 DOLLARS (\$100.00) in hand paid, the sufficiency of which is hereby acknowledged, Defendants do hereby irrevocably and unconditionally release Plaintiffs (and all of Plaintiffs' past and present officers, directors, employees, attorneys, and agents; successors, assigns, shareholders, members, owners and insurers; and all parent, subsidiary and affiliate corporations, and regulators, including but not limited to USEPA, ADEM, TDEC and the U. S. Army Corps of Engineers) from any and all causes of action, demands or claims, known or unknown, accrued or unaccrued, arising out of or relating in any manner whatsoever to Arrowhead Landfill or its permitting, design, construction and operation which Plaintiffs have presently or may have in the future arising out of any facts or events which took place on or prior to the date this Agreement is fully executed by the Parties, including, but not limited to, any and all claims, known or unknown, accrued or unaccrued, arising out of or relating to any alleged injuries sustained by Defendants as a result of Arrowhead Landfill or its permitting, design, construction and operation, which could be asserted by Defendants against the Plaintiffs. This is a complete, final, full, absolute and unconditional release of any and all claims Defendants have or may have against Plaintiffs arising out of or relating in any manner whatsoever to Arrowhead Landfill or its permitting, design, construction and operation, up to and including the date this Agreement is fully executed by the Parties.

3. As a principal part of the consideration flowing from Defendants to Plaintiffs under this Agreement, Defendants agree that:

- a) Defendants will publish on the Facebook page of Black Belt the "Press Release and Retraction", attached hereto as Exhibit A and made a part hereof by this reference. The publication will be made in such a way that it will present as pinned to the top of the Black Belt Facebook page for a period of not less than two (2) years. Defendants shall provide Plaintiffs with ten (10) copies of the Press Release and Retraction each bearing the original signature of each of the defendants and Plaintiffs shall be free to use these documents and copies of them in any way they deem fit and proper.
- b) Defendants will, contemporaneous to the execution of this Agreement, provide Plaintiffs with a complete list of all persons (and their contact information) having, whether now or at any time in the past, authority to post as an administrator on Black Belt's Facebook page.

General Release and Settlement Agreement

Green Group Holdings, LLC, et al. and (b) (6), (b) (7)(C), et al.

- c) Defendants will, within seven (7) days of the execution of this Agreement, provide Plaintiffs with documented proof that they are now the sole persons with authority to post as an administrator on Black Belt's Facebook page.
- d) Defendants will not grant authority to any third party outside the officers of Black Belt living in Perry County, Alabama, to post as an administrator on Black Belt's Facebook page.
- e) Defendants will cause to be withdrawn or removed any blocking mechanism or other designation prohibiting Plaintiffs or its subsidiary and affiliate companies or their respective agents, attorneys, contractors or employees, or Arrowhead Landfill, from posting on any social media site with which they are affiliated in any way, including, but not by way of limitation, the Black Belt Facebook page
- f) Defendants will, within thirty (30) days grant free access to forensic experts employed by Plaintiffs to their computers, tablets and hand held devices, including the provision of all necessary passcodes or other protective information to the extent necessary to retrieve all email, text messages, or other forms of electronic communications and any data of any sort on social media in any manner related to persons identified above as having administrative access to Black Belt's Facebook account, Plaintiffs, Arrowhead Landfill, coal ash, coal fired generation of electricity, any project owned or operated by Plaintiffs, any permit application in any state of the United States, persons opposing such permit applications, environmental concerns of any kind and any anticipated, pending or past local, state or federal, legal or administrative actions related to Arrowhead Landfill or arising in any way from any environmental concern alleged to have been caused, or contributed to, by Arrowhead Landfill. Such access will be allowed until the Plaintiffs experts have been satisfied that all such information has been retrieved.
- g) Defendants will provide free access to Plaintiffs of all of the financial books and records of Black Belt.
- h) Defendants submit to an examination by Plaintiffs, to be taken under oath before a court reporter, on the topics identified in items (b), (e) and (f) above, and in addition thereto, the following topics to the extent not already identified:
 - i. The false, misleading, inflammatory and libelous statements referenced above.
 - ii. Interaction and communication with various environmental groups.
 - iii. Interaction and communication with various groups opposing landfill permits sought by Green Group Holdings, LLC ("GGH") and/or its subsidiary or affiliated companies whether in Alabama or any other state.
 - iv. Interaction and communication with various persons or companies involved in any respect in the coal ash disposal business.

General Release and Settlement Agreement

Green Group Holdings, LLC, et al. and (b) (6), (b) (7)(C) et al.

- v. Interaction and communication with various persons or companies involved in any respect in the waste disposal business.
 - vi. Interaction and communication with various persons or companies involved in any respect in the generation of electric power.
 - vii. Interaction and communication with various persons or companies related to, or arising in any way from, the appearance of Esther Calhoun before the U.S. Commission on Civil Rights.
- i) Defendants will withdraw as a party from the Title VI claim filed against ADEM in connection with the renewal and modification of Permit 53-03 relating to Arrowhead Landfill, now pending before EPA's Office of Civil Rights.
- j) Defendants will comply with all reasonable requests by Plaintiffs, and make all reasonable efforts, to assist in promoting the best interests of Plaintiffs and the success of Arrowhead Landfill provided that Plaintiffs reimburse Defendants their out of pocket expenses incurred.
- k) Defendants stipulate to the truth of the following facts:
- i. They have no evidence of any environmental harm done to the Uniontown and/or Perry County communities as a result of waste disposal operations at Arrowhead Landfill including the disposal of coal ash there.
 - ii. Neither they nor their counsel have knowledge of any person or entity who has claims against Plaintiffs (and all of Plaintiffs' past and present officers, directors, employees, attorneys, and agents; successors, assigns, shareholders, members, owners and insurers; and all parent, subsidiary and affiliate corporations) that could be brought under any state or federal law or act, or otherwise, arising in any way or manner from any act, occurrence or failure to act that occurred on or prior to the date this Agreement is fully executed.
 - iii. They will no longer act as a spokesman or officer of any group, nor act in concert with any group, opposed to Plaintiffs or their respective subsidiary and affiliate companies, or their successors and assigns, or Arrowhead Landfill.
 - iv. They will not oppose, or act in concert with any person or entity seeking to oppose, any future renewals or amendments to any environmental permits deemed necessary or convenient to the operation of Arrowhead Landfill by Plaintiffs or their respective subsidiary and affiliate companies, or their successors and assigns.
 - v. They will take no action adverse to the interests of Plaintiffs or their respective subsidiary and affiliate companies, or act in concert with any person or entity seeking to act adversely to Plaintiffs or their respective subsidiary and affiliate companies, or their successors and assigns.

General Release and Settlement Agreement

Green Group Holdings, LLC, et al. and (b) (6), (b) (7)(C), et al.

- vi. Neither they nor their counsel have knowledge of any person or entity who has claims similar to those state law claims released under this Agreement or that could be brought under state or federal law or act, or otherwise, arising in any way or manner from any act, occurrence or failure to act that occurred on or prior to the date this Agreement is fully executed by the Parties.

4. The Parties hereby agree the terms of this Agreement, excepting only the Press Release and Retraction and the provisions of Paragraphs 3 a) and k), are confidential and shall not be disclosed to any person or entity, except: the Parties may make full disclosure to a Court (under seal), their attorneys and attorney's staff, experts or consultants, or pursuant to a valid subpoena or other legal process. The Parties further agree that they will not make negative, critical, or disparaging remarks to third parties about the other except to the extent of publication of the Press Release and Retraction and the provisions of Paragraphs 3 a) and k), as provided for above. If any Party or Parties disclose the confidential portions of this Agreement or make negative, critical, or disparaging remarks to third parties in violation of this Paragraph, then, upon proof by a preponderance of the evidence that a Party or Parties have breached this confidentiality and non-disparagement provision, the breaching Party or Parties shall be liable for all damages sustained by the non-breaching Party or Parties as a result of the breach which the parties stipulate would be difficult to quantify in an exact manner and therefore the Parties hereby agree are not less than Seventy Five Thousand One and no/100 DOLLARS (\$75,001.00) or the then current minimum jurisdictional amount for diversity jurisdiction in the Federal Courts.

5. Should any Party to this Agreement bring suit seeking to enforce any provision of this Agreement or alleging a breach thereof (including the confidentiality provision), the prevailing Party or Parties shall be entitled to any and all court and litigation costs, including reasonable attorney's fees, incurred in enforcing this Agreement, bringing a lawsuit for breach of this Agreement or defending a lawsuit arising out of this Agreement.

6. The Parties hereby agree that this Agreement shall be construed as a product of negotiations at arms length between equally sophisticated persons advised by counsel and shall not be construed against any party.

7. This Agreement supersedes any and all other prior agreements, either in writing or oral, between the Parties with respect to the subject matter of this Agreement and any amendment or termination of this Agreement must be in writing and signed by all Parties to this Agreement.

8. If any part of this Agreement is found void or unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms.

General Release and Settlement Agreement

Green Group Holdings, LLC, et al. and (b) (6), (b) (7)(C), et al.

9. This Agreement shall be interpreted, construed and enforced pursuant to the laws of the State of Alabama, without regard to Alabama's conflict of laws principle.

10. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the undersigned has caused this General Release and Settlement Agreement to be executed in its name effective as of the date first written above.

Green Group Holdings, LLC

By: _____
Ernest Kaufmann, President

Howling Coyote, LLC

By: _____
Ernest Kaufmann, President

General Release and Settlement Agreement

Green Group Holdings, LLC, et al. and (b) (6), (b) (7)(C), et al.

STATE OF GEORGIA §
 § ss.
COUNTY OF _____ §

I, the undersigned, a notary public in and for the State of Alabama at Large, hereby certify that Ernest Kaufmann, whose name as President of Green Group Holdings, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such President and with full authority, executed the same voluntarily for and as the act of said limited liability company.

GIVEN under my hand this _____ day of March, 2016.

Notary Public
My Commission Expires:_____

STATE OF GEORGIA §
 § ss.
COUNTY OF _____ §

I, the undersigned, a notary public in and for the State of Alabama at Large, hereby certify that Ernest Kaufmann, whose name as President of Howling Coyote, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such President and with full authority, executed the same voluntarily for and as the act of said limited liability company.

GIVEN under my hand this _____ day of March, 2016.

Notary Public
My Commission Expires:_____

General Release and Settlement Agreement

Green Group Holdings, LLC, et al. and (b) (6), (b) (7)(C), et al.

IN WITNESS WHEREOF, the undersigned has caused this General Release and Settlement Agreement to be executed as of the date first written above.

(b) (6), (b) (7)(C)

STATE OF ALABAMA §
 § ss.
COUNTY OF _____ §

I, the undersigned, a notary public in and for the State of Alabama at Large, hereby certify that (b) (6), (b) (7)(C), whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily.

GIVEN under my hand this _____ day of March, 2016.

Notary Public
My Commission Expires: _____

General Release and Settlement Agreement

Green Group Holdings, LLC, et al. and (b) (6), (b) (7)(C), et al.

IN WITNESS WHEREOF, the undersigned has caused this General Release and Settlement Agreement to be executed as of the date first written above.

(b) (6), (b) (7)(C)

STATE OF ALABAMA §
 § ss.
COUNTY OF _____ §

I, the undersigned, a notary public in and for the State of Alabama at Large, hereby certify that (b) (6), (b) (7)(C) whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily.

GIVEN under my hand this _____ day of March, 2016.

Notary Public
My Commission Expires: _____

General Release and Settlement Agreement

Green Group Holdings, LLC, et al. and (b) (6), (b) (7)(C), et al.

IN WITNESS WHEREOF, the undersigned has caused this General Release and Settlement Agreement to be executed as of the date first written above.

(b) (6), (b) (7)(C)

STATE OF ALABAMA §
 § ss.
COUNTY OF _____ §

I, the undersigned, a notary public in and for the State of Alabama at Large, hereby certify that (b) (6), (b) (7)(C) whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily.

GIVEN under my hand this _____ day of March, 2016.

Notary Public
My Commission Expires: _____

General Release and Settlement Agreement

Green Group Holdings, LLC, et al. and (b) (6), (b) (7)(C), et al.

IN WITNESS WHEREOF, the undersigned has caused this General Release and Settlement Agreement to be executed as of the date first written above.

(b) (6), (b) (7)(C)

STATE OF ALABAMA §
 § ss.
COUNTY OF _____ §

I, the undersigned, a notary public in and for the State of Alabama at Large, hereby certify that (b) (6), (b) (7)(C), whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily.

GIVEN under my hand this _____ day of March, 2016.

Notary Public
My Commission Expires: _____

EXHIBIT 13

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

GREEN GROUP HOLDINGS, LLC, a)
Georgia limited liability company and)
HOWLING COYOTE, LLC, a Georgia)
limited liability company,)

PLAINTIFFS,)

VS.)

CIVIL ACTION NO.:

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy)
(b) (6) Privacy, (b) (7)(C) Enforcement Privacy)

2:16-cv-00145-CG-N

individually and as members)
and officers of BLACK BELT CITIZENS)
FIGHTING FOR HEALTH AND)
JUSTICE, an unincorporated association,)

DEFENDANTS.)

AMENDED COMPLAINT

This Amended Complaint is filed in compliance with the Court’s Order dated April 12, 2016. (Doc. 8).

PARTIES

1. The Plaintiff Green Group Holdings, LLC, is a Georgia limited liability company having its principal place of business in Canton, Georgia.

2. The Plaintiff, Howling Coyote, LLC, is a Georgia limited liability company having its principal place of business in Canton, Georgia.

3. The Defendant (b) (6) Privacy, (b) (7)(C) Enforcement Privacy a resident citizen of Perry County, Alabama, over the age of 19 years and of sound mind.

4. The Defendant (b) (6) Privacy, (b) (7)(C) Enforcement Privacy a resident citizen of Perry County, Alabama, over the age of 19 years and of sound mind.

5. The Defendant (b) (6) Privacy, (b) (7)(C) Enforcement Privacy a resident citizen of Perry County, Alabama, over the age of 19 years and of sound mind.

6. The Defendant (b) (6) Privacy, (b) (7)(C) Enforcement Privacy a resident citizen of Perry County, Alabama, over the age of 19 years and of sound mind.

JURISDICTION

7. This action is brought pursuant to 28 U.S.C. §1332, as a civil action between citizens of different states where the amount in controversy exceeds Seventy Five Thousand and no/100 DOLLARS (\$75,000.00), exclusive of interest and costs.

8. The Plaintiff Green Group Holdings, LLC, (“Green Group”) is a Georgia limited liability company having its principal place of business in Canton, Georgia. The two owners of membership interests in Green Group, each owning a fifty per cent (50%) interest, are Herzog Contracting Corp., a Missouri corporation (“Herzog”), having its principal place of business in St. Joseph, Missouri, and Phillips Management and Services, LLC, a Tennessee limited liability company (“PMS”), having its principal place of business in Knoxville, Tennessee. Phillips Management and Services, LLC, is wholly owned by the W.T. Phillips, Sr. 2005 Irrevocable Family GSTT Trust, dated April 28, 2005 (the “Trust”). The Trustee of this Trust is W. T. Phillips, Sr., a resident citizen of Land O’ Lakes, Florida. The Trust is a “traditional family planning trust” created and governed

pursuant to the laws of the State of Florida¹, which is to say it is not a distinct legal entity but serves to establish a fiduciary relationship between its Trustee and the beneficiaries of the Trust. Under the terms of the said trust agreement, the Trustee has the power to hold, manage, and dispose of assets for the benefit of the Trust's beneficiaries. The Trust is not a "corporate trust" and thus does not have any owners nor are there any certificates or other legal documentation that might otherwise reflect trust certificates or any other factors that may classify this as a business trust, corporate trust or real estate trust.² The citizenship of Herzog and the Trust are thus deemed to be the states of Missouri³ and Florida, respectively.

9. The Plaintiff Howling Coyote, LLC, ("Howling Coyote") is a Georgia limited liability company having its principal place of business in Canton, Georgia, is the wholly owned subsidiary of Green Group Environmental Services, LLC, a Georgia limited liability company, a wholly owned subsidiary of Green Group, and is thus deemed to have the same citizenship as Green Group.

10. Complete diversity exists because all Defendants are citizens of the state of Alabama while the Plaintiffs are deemed to be citizens of the states of Missouri and Florida.

FACTUAL ALLEGATIONS

11. Howling Coyote was established by Green Group to own and operate the Arrowhead Landfill which it purchased pursuant to the Second Amended Order Authorizing the Sale of The Sale Assets pursuant to 11 U.S.C. § 363(b), Free and Clear of

¹ See F.S.A. § 736.0101, *et seq.*

² See letter from Jamie Hargrove, the draftsman of the Trust, attached as Exhibit A and made a part hereof by this reference.

³ 28 U.S.C. § 1332(c)(1)

All Liens, Claims and Encumbrances (Doc. 404) entered by the United States Bankruptcy Court for the Southern District of Alabama, Northern Division, on December 21, 2011⁴.

12. The sale of Arrowhead Landfill was closed on December 21, 2011, and the deed to Howling Coyote from James M. Grady, as Liquidating Trustee, was recorded on December 21, 2011, in office of the Probate Judge for Perry County, Alabama, in Deed Book 614 at Pages 591, *et seq.*

13. On December 22, 2008, a dike failure released or spilled an estimated 5.4 million cubic yards of coal ash⁵ into the adjacent waters of the Emory River that covered about 300 acres, including most of Swan Pond Embayment, the lower Emory River, and reservoir shorelines.

14. On May 11, 2009, TVA and the U. S. Environmental Protection Agency (“EPA”) Region 4 entered into an *Administrative Order and Agreement on Consent*, Docket No.: CERCLA-04-2009-3766, Proceeding Under Sections 104(a), 106(a), and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (the “Administrative Order”),⁶ which provided in part as follows:

“TVA shall not permanently dispose of any Waste Material at an off-Site facility, or in a new landfill on-Site, unless that facility or landfill is operating in compliance with RCRA Subtitle D permitting requirements for operation and disposal of industrial wastes which, at a minimum, shall include the use of a synthetic liner, leachate collection system, groundwater monitoring, financial assurance, and closure and post-closure care.”

⁴ See: *In re Perry Uniontown Ventures I, LLC*, and *Perry County Associates, LLC*, cases numbered 10-00276-MAM-11 and 10-277-MAM, Jointly Administered, in the United States Bankruptcy Court for the Southern District of Alabama, Northern Division.

⁵ Also known as “fly ash”, “bottom ash”, coal combustion residual (“CCR”) and/or coal combustion waste (“CCW”).

⁶ Attached hereto as Exhibit B (at pp. 18-19) and made a part hereof by this reference.

15. Pursuant to the Administrative Order, TVA solicited proposals and then submitted to EPA Region 4 for approval, its Offsite Ash Disposal Options Analysis recommending that Arrowhead Landfill be approved as the disposal site for the Time-Critical Removal Action, and on July 2, 2009, EPA Region 4, approved that plan.⁷ TVA found and EPA concurred that:

“The Arrowhead Landfill is a state-of-the-art, Subtitle D Class I facility. The composite liner system consists of 2 feet of 1×10^{-7} cm/sec compacted clay, a 60 mil high density polyethylene geomembrane liner, and a 2 foot thick drainage layer with a leachate collection system and protective cover. The site geology consists of the Selma Group chinks which ranges from 500 to 570 feet thick across the site, with a permeability less than 1×10^{-8} cm/sec. The uppermost groundwater aquifer is located beneath this layer.”

16. Arrowhead Landfill, under its prior ownership, began acceptance of the time-critical waste material, consisting primarily of coal ash released from the Tennessee Valley Authority (“TVA”)’s Kingston Fossil Plant, on July 4, 2009.

17. The time-critical waste material was loaded into “burrito bag” lined gondola rail cars in Kingston and shipped to Arrowhead Landfill by rail, unloaded and transported by truck from the railhead to the disposal site. The waste material maintained a moisture content of approximately 25% while in the rail cars and a moisture content of approximately 23% while exposed in the disposal cell. The coal ash did not become airborne at anytime after it arrived at Arrowhead Landfill’s rail yard.

⁷ See Offsite Ash Disposal Options Plan and Approval attached hereto as Exhibit C (at p. 13) and made a part hereof by this reference.

18. The overwhelming majority of the waste material from Kingston was disposed of in disposal cells that have been closed in accord with the rules and regulations promulgated by the Alabama Department of Environmental Management (“ADEM”).

19. ADEM is primarily responsible for the issuance of the permits necessary to operate Arrowhead Landfill as well as the monitoring of Arrowhead’s compliance with the terms of those permits. The permits that have been issued, and in some cases revised and/or renewed by ADEM⁸ are:

Solid Waste Disposal Facility Permit No. 53-03
General NPDES Permit No. ALG160167 (Landfill)
General NPDES Permit No. ALG140902 (Trans-Load Station)
State Indirect Discharge Permit No. IU395300144

20. Arrowhead Landfill opened on October 15, 2007. Since that date it has received no notices of violation of any of its permits from ADEM or EPA despite having been inspected numerous times by each.

21. Black Belt Citizens Fighting for Health and Justice (“Black Belt”) publishes and maintains a website at <http://blackbeltcitizens.wix.com/blackbeltcitizens>. That website is disseminated to a national and international market and states that one of Black Belt’s goals is to “Get rid of the Arrowhead Landfill”.

22. Black Belt’s website further states, under its “Projects” tab that:

“Arrowhead Landfill, located on south Perry County Road 1 near Uniontown, Alabama, **poses a serious health and environmental threat** to our area. **Built on an unsuitable site** over our aquifer, it now contains almost

⁸ Perry County Associates, LLC, an Alabama limited liability company, is the holder of all permits issued by ADEM. Its principal place of business is in Canton, Georgia, and it is wholly owned by Central Alabama, LLC, a Georgia limited liability company, with its principal place of business in Canton, Georgia. Central Alabama, LLC, is the wholly owned subsidiary of Green Group.

4 million tons of toxic coal ash from the Kingston TN spill. Stormwater runoff and **deliberate discharges from the landfill reveal high levels of arsenic** which, along with **toxic dust and noxious odors, are impacting residents**, their livestock, and the garden produce on which they depend.” (Emphasis added.)

23. Black Belt publishes and maintains a Facebook page that is disseminated to a national and international market. That Facebook page has been used in a false and malicious manner to accomplish Black Belt’s stated goal of getting rid of Arrowhead Landfill. It may be found at <https://www.facebook.com/Black-Belt-Citizens-753236721412415/>.

24. The posts to this Facebook page (which the Defendants allege were written and posted on their Facebook page without their prior knowledge or approval)⁹ include the following specific false and defamatory publications:

October 23, 2015: Arrowhead Landfill and its owners, **Green Group Holdings, neglects laws, peoples’ rights, and our culture. First, corruption and unlawful actions get the landfill here.** Then, 4 million tons of coal ash and garbage from 33 states. Now, Arrowhead landfill and **Green Group Holdings are trespassing and desecrating a black cemetery.** Black lives matter! Black ancestors matter! (Emphasis added.)

November 2, 2015: Coal ash landfills, like **Arrowhead Landfill, continue to leak toxins into rivers, streams, and groundwater**, potentially affecting the quality of drinking water. This toxic waste effects everyone, please watch this short film about the problems at Arrowhead. (Emphasis added.)

November 13, 2015: Black Belt Citizens demand no more coal ash in Uniontown! Black Belt Citizens demand ADEM and EPA enforce their laws to prevent further discrimination against the community. **The landfill is poisoning our homes and destroying our Black cemetery (sic).** THIS IS ENVIRONMENTAL INJUSTICE! Where's our justice? (Emphasis added.)

⁹ Taking this allegation to be true, it forms the basis for the addition of fictitious party Defendants.

November 13, 2015: Uniontown residents continue to be upset over the actions of the Arrowhead Landfill, over the past 3 days there has been another unpermitted (illegal) discharge leaving **Green Group Holdings toxic landfill**. This has been occurring for years and ADEM has never enforced their permit limits to stop this problem. The majority of the **residents around the landfill are worried about their** water, air, property values, **families' health, and the nearby sacred cemetery that is also being desecrated by the landfill**. (Emphasis added.)

November 18, 2015: Continued onslaught, pollution, exploitation, & crimes against our Black community; unpermitted discharges leaving from **toxic Arrowhead Landfill** & destroying property values; increasing health threats, stress, & violence; these oppressive actions cause poverty & discrimination. The **Arrowhead Landfill is also desecrating the nearby Black cemetery**. (b) (6) Privacy, (b) (7)(C) Enforcement Privacy President of Black Belt Citizens, says "I feel like I'm in prison, we're **suffocated by toxic pollution** & extreme poverty. Where are my freedoms? This is an environmental injustice & it's happening in Uniontown & everywhere" (Emphasis added.)

25. On November 19, 2015, Plaintiffs' counsel sent a letter to Defendants by e-mail demanding that, given the nature of the posting via electronic media, that Defendants immediately delete these posts from their Facebook page and retract their prior posts as being false and misleading. Further demand was made that they immediately cease and desist from making false, erroneous statements about Green Group Holdings and Arrowhead Landfill.

26. There was no response to the November 19, 2015, and further posts to this Facebook page include the following specific false and defamatory publications:

November 20, 2015: Pictures of the New Hope Cemetery, neighbor of Arrowhead Landfill. The photos are of possible trespass and recent bulldozing done by the landfill, some of the graves are unable to be located, family members are upset over their **sacred space being violated, damaged, & desecrated**. Arrowhead Landfill is on the site of an older plantation. The New Hope Cemetery is the final resting place of former workers, indentured servants, and slaves of the plantation. Recent actions by the landfill and improper enforcement from the state constantly remind Uniontown's

residents of their past life full of violence, hate, & oppression. (Emphasis added.)

December 5, 2015: "We are tired of being taken advantage of in this community," said Uniontown resident (b) (6) Privacy, (b) (7)(C) Enforcement Privacy, who is a member of the group Black Belt Citizens Fighting for Health and Justice. "The living around here can't rest because of the **toxic material** from the coal ash **leaking into creeks and contaminating the environment**, and the deceased can't rest because of **desecration of their resting place**." (Emphasis added.)

January 11, 2016: **Multiple pollution sources impact residents including Arrowhead Landfill** which stores over 4 million tons of toxic coal ash. This **landfill is experiencing unpermitted amounts of water runoff leaving its site and entering neighboring property**. Also, the landfill may have committed **illegal trespass & desecration of an adjacent Black cemetery**. The owners of this landfill, **Green Group Holdings, own and operate many extreme landfills around the US**.

...

This event is created to unite citizens across Perry County and Uniontown, Alabama's Black Belt, and the Southeast US to accomplish the following:

...

- Identify communities' needs against environmental injustices including **illegal pollution**, coal ash, corporate interests for **toxic landfills**, and **"extreme energy waste sites"** (Emphasis added.)

January 14, 2016: Join us this Saturday in Uniontown for Building Bridges for Justice as we focus on the **toxic, 4 million tons of coal ash** sitting in the Arrowhead Landfill. The **landfill's pollution problems are influencing the decrease of property values while increasing health concerns**. This extremely large landfill owned by Green Group Holdings has been reportedly **trespassing and desecrating a nearby Black Cemetery**. These impacts are very discriminatory and we feel our civil rights are being violated by environmental racism at all levels. (Emphasis added.)

February 25, 2016: "Its a landfill, its a tall mountain of coal ash and it has affected us. **It affected our everyday life**. It really has done a lot to our freedom. **Its another impact of slavery**. ...Cause we are in a black residence, things change? And you can't walk outside. And **you can not breathe. I mean, you are in like prison**. I mean, its like **all your freedom is gone**. As a black woman, our voices are not heard. EPA hasn't listened and ADEM has not listened. Whether you are white or black, rich or poor, it should still matter and **we all should have the right to clean air and clean water**. I want to see EPA do their job."

Powerful words from our President (b) (6) Privacy, (b) (7)(C) Enforcement Privac. (Emphasis added.)

March 1, 2016: The **toxic Arrowhead Landfill** continues to hurt/violate/oppress the community with the **desecration of the adjacent cemetery**, the **constant run-off of contaminated water**, the **bad odors and smells**, and the **depression of property value**.

Watch this small video by Black Belt Citizens member (b) (6) Privacy, (b) (7)(C) Enforcement Privac as he records run-off at **toxic Arrowhead**. Black Belt Citizens stand with all communities impacted by toxic coal ash and extreme energy wastes. We stand united with all communities suffering from oppressive and discriminatory policies and practices. We stand with all people who fight for health and justice. (Emphasis added.)

27. On March 10, 2016, Plaintiffs' counsel sent a letter to Defendants by e-mail demanding that, given the nature of the posting via electronic media, Defendants immediately delete these posts from their Facebook page and retract their prior posts as being false and misleading. Further demand was made that they immediately cease and desist from making false, erroneous statements about Green Group Holdings and Arrowhead Landfill.

28. On the late afternoon of March 15, 2016, defendant (b) (6) Privacy, (b) (7)(C) En sent an email on her behalf as well as on behalf of her sister, Defendant (b) (6) Privacy, (b) acknowledging receipt of the March 10, 2016 letter and providing notice that the offending posts had been removed from the Black Belt Facebook page. She further alleged that the posts were written and posted without the knowledge or approval of the officers of Black Belt (the Defendants) and she stated that a further response to our "requests" would be forthcoming from the Defendants or their (unnamed) "attorneys".

29. On the early morning of March 16, 2016, Plaintiffs' counsel sent a letter to Defendants by e-mail which, *inter alia*, reminded Defendants of the demand for a

repudiation or retraction of their prior posts and extending the previously provided deadline for its publication to Friday March 18, 2016. Inquiry was also made as to whether Defendant [REDACTED] was speaking for all four Defendants or just herself and her sister. Demand was also made for the disclosure of the identity and contact information for the person or persons who did write and post the libelous material that had been removed from Black Belt's Facebook page.

30. On March 17, 2016, defendant [REDACTED] sent an email on her behalf as well as on behalf of her sister, Defendant [REDACTED] again stating that a further response to our letter would be forthcoming from the Defendants or their (unnamed) "counsel".

31. On March 18, 2016, a letter of representation as to all four Defendants was received promising a full response after meeting with those defendants "early next week".

32. The promised "full response" was received March 28, 2016, and was little more than an argumentative letter which included no retraction or repudiation of any of the material specified above as false, defamatory and misleading and lacking in any factual support.

33. A final demand for a retraction was delivered on March 30, 2016, and the deadline given in that demand for making such retraction has passed without any response from Defendants or their counsel.

COUNT I

(LIBEL)

34. Plaintiffs aver that the Defendants published the above material knowing of its falsity and sensationalizing sting, with malice by intentional action or with reckless

disregard for the truth, with an intent to disparage and demonize Plaintiffs and Arrowhead Landfill in the hope of achieving their goal of getting rid of Arrowhead Landfill.

35. Plaintiffs aver that by portraying Arrowhead Landfill as a facility that is a corrupt, intentional polluter of the Uniontown community that also desecrates cemeteries and is intentionally preying on that community to the extent that it calls to mind slavery times and false imprisonment, the Defendants have through the national and international publication of such sensational and defamatory (though false) allegations permanently injured and damaged the business and reputation of Plaintiffs.

36. As a proximate consequence of the libel and defamation of Plaintiffs, they have been injured and permanently damaged as set forth herein.

WHEREFORE, the Plaintiffs demand judgment against the Defendants, separately and severally, in the amount of Five Million and no/100 DOLLARS (\$5,000,000.00) in compensatory damages and Ten Million and no/100 DOLLARS (\$10,000,000.00) in punitive damages.

COUNT II

(SLANDER)

37. Plaintiffs further aver that the Defendants organized and publicized a “news conference” held on December 4, 2015, featuring the Alabama State Conference of the NAACP in Uniontown, Alabama, and during that press conference, Defendant (b) (6) Privacy, (b) (7)(C) Publicity told the press there assembled, including Dennis Pillion from al.com¹⁰, that:

¹⁰ Articles on al.com are available nationally and internationally through their on line presence at <http://www.al.com>.

"We are tired of being taken advantage of in this community," said Uniontown resident [REDACTED] who is a member of the group Black Belt Citizens Fighting for Health and Justice. "The living around here can't rest because of the **toxic material** from the coal ash **leaking into creeks and contaminating the environment**, and the deceased can't rest because of **desecration of their resting place**." (Emphasis added.)¹¹

38. Plaintiffs aver that the the Defendant [REDACTED] knew or had reason to know of the lack of a truthful foundation for his statement and yet used the occasion to further hype the sensational and defamatory nature of the continuing campaign by Black Belt against Arrowhead Landfill in furtherance of its stated goal to "Get rid of the Arrowhead Landfill".

39. Plaintiffs further aver that the Defendants obtained an appearance by Defendant [REDACTED] on the "Uprising with Sonali" radio show which originates in Southern California and is available nationally and internationally through that show's website. During Defendant [REDACTED] appearance, she made statements on air that were false and defamatory, including:

"Its a landfill, its a tall mountain of coal ash and it has affected us. **It affected our everyday life.** It really has done a lot to our freedom. **Its another impact of slavery.** ...Cause we are in a black residence, things change? And you can't walk outside. And **you can not breathe. I mean, you are in like prison.** I mean, its like **all your freedom is gone.**"

"As a black woman, our voices are not heard. EPA hasn't listened and ADEM has not listened. Whether you are white or black, rich or poor, it should still matter and **we all should have the right to clean air and clean water.** I want to see EPA do their job."

¹¹ See: *Cemetery Dispute the Latest Conflict Between Arrowhead Landfill, Uniontown Residents*, Dennis Pillion, December 5, 2015, http://www.al.com/news/index.ssf/2015/12/arrowhead_landfill_uniontown_r.html

40. The statements made by the Defendants (b) (6) Privacy, (b) (7)(C) Enforcement Privacy were false and defamatory and were made with the malicious intent or reckless disregard to publish such false statements despite knowing or having reason to know of their falsity.

41. Plaintiffs aver the publication of such sensational and defamatory (though false) allegations have permanently injured and damaged the business and reputation of Plaintiffs.

42. As a proximate consequence of the slander of Plaintiffs, they have been injured and permanently damaged as set forth herein.

WHEREFORE, the Plaintiffs demand judgment against the Defendants, separately and severally, in the amount of Five Million and no/100 DOLLARS (\$5,000,000.00) in compensatory damages and Ten Million and no/100 DOLLARS (\$10,000,000.00) in punitive damages.

TRIAL BY JURY is demanded as to all counts.

//s/ Michael D. Smith
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EXHIBIT 14

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

GREEN GROUP HOLDINGS, LLC, a Georgia limited liability company and HOWLING COYOTE, LLC, a Georgia limited liability company,

Plaintiffs,

vs.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy
[REDACTED], as individuals and as members and officers of BLACK BELT CITIZENS FIGHTING FOR HEALTH AND JUSTICE, an unincorporated association,

Defendants.

No. 2:16-cv-00145-CG-N

JUDGE CALLIE V.
S. GRANADE

MAGISTRATE
JUDGE
KATHERINE P.
NELSON

*ORAL ARGUMENT
REQUESTED*

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS
PURSUANT TO RULE 12(b)(6)**

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Introduction

In December 2008, 5.4 million cubic yards of coal ash spilled out of a landfill in Tennessee following a catastrophic dike failure. The widely publicized spill contaminated the land, rivers, reservoirs, and shore areas surrounding the landfill with metals such as arsenic—a known human carcinogen—and lead, and caused the Environmental Protection Agency (“EPA”) to conclude that there was a potential “imminent and substantial endangerment to the public health.”¹

In July 2009, the EPA approved a plan to transport the “time critical” coal ash from the defunct Tennessee facility to the Arrowhead Landfill in Uniontown, Alabama. Uniontown is an overwhelmingly Black town—one of Alabama’s poorest, and one whose residents can fairly be said to lack the political power to prevent their town from being used as a repository for waste from whiter, more prosperous areas of the State and country. Citizens of Uniontown, understandably outraged, organized to oppose the pervasive racial and environmental injustice their elected officials had failed to prevent. They spoke out against the landfill, expressing concern about risks to their environment and their health, the unfair location of the landfill in their community (and directly across the street from several homes), and the potential for the desecration of one of Uniontown’s historic Black cemeteries. In short, they engaged in civic association and political speech at the very core of the First Amendment’s protections.

Plaintiffs Green Group Holdings, LLC (“Green Group”) and Howling Coyote, LLC (“Howling Coyote”) are the owners of Arrowhead Landfill, which has existed in Uniontown since 2007. The landfill has been the subject of intense public criticism since it opened, and

¹ Amended Complaint, Doc. 10 (hereinafter “Complaint” or “Am. Compl.”), Ex. B at 8 ¶ 20.f.

especially after it began receiving the coal ash that had destroyed large swaths of the environment in Tennessee. In acquiring this landfill, the plaintiffs voluntarily entered a strictly regulated, high-profile industry rife with existing controversy about environmental safety and racial justice. To put it mildly, they injected themselves into a realm not suited for any entity with thin skin.

And yet they now seek \$30 million in damages for “harms” from allegedly defamatory statements made by concerned citizens in Uniontown about the landfill—statements such as, “[The landfill has] affected our everyday life,” “[W]e should all have the right to clean air and clean water,” and “Its another impact of slavery.”² The individual defendants accused of causing these “harms” are members of Black Belt Citizens Fighting for Health and Justice (“Black Belt Citizens”), an unincorporated concerned-citizens’ group dedicated to fighting for racial and environmental justice in Uniontown.

None of the statements at issue in this lawsuit goes further than expressing outrage at the presence of a massive coal ash landfill in Uniontown and concern about the attendant (and well-documented) risks to health, property, and dignity. The First Amendment does not permit public figure corporations to recover damages for expressions of public opinion with which they disagree, and it therefore does not permit this lawsuit to proceed.

Unfortunately, this is far from the first time that a for-profit corporation has sued Black citizens for having the temerity to organize against businesses that they believe perpetuate racial injustice. The facts here share much in common with a seminal Supreme Court case upholding the First Amendment rights of Black citizens in the face of lawsuits from white-owned

² These statements are not just exemplary—they were actually highlighted for special emphasis in the Complaint. Am. Compl. ¶¶ 26, 39.

businesses, *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886 (1983). In that case, “[t]he black citizens named as defendants . . . banded together and collectively expressed their dissatisfaction with a social structure that had denied them rights to equal treatment and respect.”

Id. at 907. As the Supreme Court observed:

[T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process.

. . . .

[E]xpression on public issues has always rested on the highest rung of the hierarchy of First Amendment values. Speech concerning public affairs is more than self-expression; it is the essence of self-government. There is a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.

Id. at 907, 913 (alteration, citations, and quotation marks omitted).³

This case is a classic example of what has become known as a “strategic lawsuit against public participation,” or SLAPP suit. A SLAPP suit is one intended to silence, censor, and intimidate critics out of the marketplace of ideas by saddling them with the cost of a lawsuit they can ill afford. Alabama is among the shrinking minority of states without a statute designed specifically to protect the average person exercising his or her right to free speech from an abusive SLAPP suit; for example, the plaintiffs’ claims would face a higher bar even in their home state of Georgia.⁴ But even where anti-SLAPP legislation is not available, SLAPP suits are meritless and must be dismissed. SLAPP suits in general are an affront to First Amendment values; this case is also an affront to the causes of racial and environmental justice in Alabama, and it should not be countenanced.

³ The Court cited for this principle, among other authorities, the seminal case of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), which, in a controversy over political speech and racial justice in Alabama, recognized the core First Amendment protections that bar suits such as this one.

⁴ See Ga. Code Ann. § 9-11-11.1.

This Court should honor our nation’s profound commitment to robust public debate by dismissing all claims in this case with prejudice and without delay, because the Complaint fails to state a viable claim as a matter of law.

Statement of Facts

Arrowhead Landfill is located in Uniontown, Alabama—a town with a median annual household income of less than \$14,000, where 47.6% of the population lives below the poverty line and over 90% of the population is Black.⁵ All four defendants are individuals who reside in Uniontown, in close proximity to the landfill. They are members of Black Belt Citizens, which is a grassroots community service organization dedicated to addressing concerns about health, environmental issues, and racial justice in Uniontown.

Arrowhead Landfill was opened in October 2007 to operate as a massive solid waste disposal facility pursuant to permits issued by the Alabama Department of Environmental Management (“ADEM”) and regulations promulgated by the EPA. Am. Compl. ¶¶ 19–20; 40 C.F.R. Part 258.

On December 22, 2008, a dike failure at the Kingston Fossil Fuel Plant in Roane County, Tennessee caused approximately 5.4 million cubic yards of coal ash to spill into the environment, contaminating the surrounding land, rivers, reservoirs, and shore areas. Am. Compl., Ex. B at 6 ¶ 12.⁶ Coal ash has constituents defined as “hazardous substance[s]” under

⁵ Based on U.S. Census data available at http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml# by typing “Uniontown, AL” into the search box and selecting the “Income” and “Poverty” tabs, and by selecting the “Race and Hispanic Origin” tab and selecting the “Race and Hispanic or Latino Origin” link under “2010 Census.”

⁶ Exhibit B to the Complaint, which is incorporated by reference, Am. Compl. ¶ 14 n.6, is an *Administrative Order and Agreement on Consent* in *In re: TVA Kingston Fossil Fuel Plant Release Site, Roane Cty., Tenn.*, Docket No. CERCLA-04-2009-3766, Doc. 10 (U.S. Env’t Protection Agency Region 4, May 2009).

the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14); *see also* Am. Compl., Ex. B at 8 ¶ 20.b, and arsenic, one of its constituents, is classified by the EPA as a known human carcinogen and as harmful to wildlife, Am. Compl., Ex. B at 7–8 ¶ 19. After tests, Tennessee and the Tennessee Valley Authority (“TVA”) determined that levels of arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, and zinc from coal ash in surface water near the spill “exceeded the National Recommended Ambient Water Quality Criteria . . . for protection of aquatic life,” and the EPA found that “if the ash material is not properly managed and remediated, . . . potential exposure from ash on the ground could present unacceptable impacts to human health and/or the environment.” Am. Compl., Ex. B at 7–8 ¶¶ 18–19.

Pursuant to an agreement between the EPA and the TVA, Arrowhead Landfill was selected as the disposal location for coal ash from the Tennessee spill. Am. Compl. ¶ 15 & Ex. C at 13.⁷ Accordingly, on July 4, 2009 the landfill began receiving coal ash from Tennessee. Am. Compl. ¶ 16. Approximately 4 million tons were ultimately transferred to Uniontown. Dennis Pillion, *Cemetery Dispute the Latest Conflict Between Arrowhead Landfill, Uniontown Residents*, Al.com (Dec. 5, 2015), <http://s.al.com/82yPD9Z> (hereinafter “Pillion Article”); *see also* Am. Compl. ¶ 37 (incorporating this article by reference into the Complaint). Since then, Arrowhead has been the subject of a flood of public complaints concerning the odors, noises,

⁷ Exhibit C to the Complaint, which is incorporated by reference, Am. Compl. ¶ 15 n.7, is an *Off-Site Ash Disposal Options Analysis Work Plan* submitted by the TVA to the EPA on June 29, 2009 pursuant to the *Agreement on Consent* in *In re: TVA Kingston Fossil Fuel Plant Release Site, Roane Cty., Tenn*, Docket No. CERCLA-04-2009-3766 (U.S. Env’tl Protection Agency Region 4, May 2009).

traffic, and health issues it has caused in Uniontown. *Id.*⁸ It is also the subject of an EPA civil rights investigation that relates to the ADEM’s decision to renew the landfill’s permits and expand the disposal area.⁹ *Id.*; *see also* Am. Compl. ¶ 26 (indicating the defendants’ awareness of complaints made to the ADEM and the EPA).

The plaintiffs entered this fray in December 2011, when, after the previous owners of the landfill filed for bankruptcy, Green Group formed Howling Coyote, a wholly-owned subsidiary, to take over ownership of Arrowhead Landfill pursuant to an order of the U.S. Bankruptcy Court for the Southern District of Alabama. Am. Compl. ¶ 11. The plaintiffs are Georgia companies with their principal places of business in Georgia and with members residing in Florida, Georgia, Missouri, and Tennessee. Am. Compl. ¶¶ 1–2, 8. Green Group, through Perry County Associates, LLC—a separate subsidiary—holds four ADEM permits for activities related to operating the landfill. Am. Compl. ¶ 19. As owners of a municipal solid waste landfill, the plaintiffs must also comply with extensive federal operating, design, monitoring, and financing requirements. *See* 40 C.F.R. Part 258.

The present litigation was commenced on April 5, 2016, when Green Group and Howling Coyote sued **(b) (6) Privacy, (b) (7)(C) Enforcement Privacy** and various fictitious individuals for libel and slander under Alabama law, alleging that various statements posted to

⁸ The ADEM website indicates that 183 public complaints were filed about Arrowhead Landfill between August 2010 and March 2016. *See* Ala. Dep’t of Env’tl Mgmt., *eFile*, <http://app.adem.alabama.gov/eFile/> (accessible by entering the facility number for Arrowhead Landfill, 17668, as a Master ID in the “Facility” field, selecting the checkboxes for “air,” “land,” and “water,” and selecting “Complaints” from the “Document Category / Type” field). As an example, a complaint from April 2015 mentions an “ongoing” issue with runoff from the landfill entering neighborhood property. *See* Record of Complaint, Apr. 14, 2016, <http://app.adem.alabama.gov/eFile/Download.ashx?lib=Field&docId=004090487>.

⁹ Civil rights complaint available at http://www.enviro-lawyer.com/ADEM_Title_VI_Complaint_2013.pdf.

the Black Belt Citizens website and Facebook page and spoken during radio interviews had defamed them. *See* Doc. 1. Each plaintiff seeks a total of \$5 million in compensatory damages and \$10 million in punitive damages. *See* Am. Compl. The allegedly defamatory statements are set forth in paragraphs 22, 24, 26, 37, and 39 of the Complaint, with emphasis added by the plaintiffs indicating the portions they assert to be defamatory. The libel claim is asserted against all four named defendants and based on the theory that these individuals hosted defamatory statements made by anonymous others on the Black Belt Citizens website and Facebook page. *See* Am. Compl. ¶¶ 22, 24, 34. The slander claim is asserted against Calhoun and Eaton for public statements made at a news conference and on a radio show. *See* Am. Compl. ¶¶ 37, 39.

On April 8, the Court issued an order dismissing the fictitious parties, and on April 12, Magistrate Judge Nelson directed the plaintiffs to file an amended complaint addressing various deficiencies in their allegations of federal jurisdiction. *See* Docs. 7 & 8. An amended complaint was filed on April 22, 2016 and served on May 18, 2016. By this motion, the defendants respectfully urge the Court to dismiss the Complaint in its entirety for failure to state a viable claim as a matter of law.

Legal Argument

I. Requirements for pleading a defamation claim

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a plaintiff to present “a short and plain statement of the claim showing that the pleader is entitled to relief.” The purpose of this notice-pleading requirement is to “give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Am. Dental Ass’n v. Cigna Corp.*, 605 F.3d 1283, 1288 (11th Cir. 2010) (alteration omitted). Accordingly, in order to survive a motion to dismiss, a plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*

Twombly, 550 U.S. 544, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (requiring dismissal “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct”). While specific factual allegations must be accepted as true for purposes of evaluating the sufficiency of the pleadings, this “tenet . . . is inapplicable to legal conclusions.” *Iqbal*, 556 U.S. at 678. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* (citing *Twombly*, 550 U.S. at 555).

Under Alabama law, a cause of action for defamation consists of “1) a false and defamatory statement concerning the plaintiff; 2) an unprivileged communication of that statement to a third party; 3) fault amounting at least to negligence; and 4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication of the statement.” *Drill Parts & Serv. Co. v. Joy Mfg. Co.*, 619 So. 2d 1280, 1289 (Ala. 1993). A defamatory statement is one that “tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” *Blevins v. W.F. Barnes Corp.*, 768 So. 2d 386, 389–90 (Ala. Civ. App. 1999). In order to be actionable, a statement must also “contain a provably false factual connotation.” *Kelly v. Arrington*, 624 So. 2d 546, 550 (Ala. 1993). “[S]tatement[s] of opinion,” “imaginative expression,” and “rhetorical hyperbole” therefore do not suffice. *Deutch v. Birmingham Post Co.*, 603 So. 2d 910, 912 (Ala. 1992).

In addition to pleading actionable defamation, a plaintiff must comply with federal constitutional requirements that protect free speech. *McCaig v. Talladega Publ’g Co.*, 544 So. 2d 875, 877 (Ala. 1989). In order to afford the “breathing space essential” to the “fruitful exercise” of First Amendment rights, the U.S. Supreme Court has prescribed “an extremely powerful antidote” to the “self-censorship” that results from “common-law . . . liability for libel and

slander.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974) (quotation marks omitted).

Plaintiffs who “are properly classed as public figures . . . may recover for injury to reputation only on clear and convincing proof that [a] defamatory falsehood was made with knowledge of its falsity or with reckless disregard for the truth.” *Id.* (referring to the “actual malice” standard set forth in *N.Y. Times*, 376 U.S. 254).

When, as here, plaintiffs are public figures (see Parts IV.B and IV.C, below), properly pleaded defamation claims must include a plausible factual predicate for actual malice; a conclusory allegation that a statement was made with the requisite malice does not suffice. *See Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 703–04 (11th Cir. 2016) (affirming dismissal of complaint under Rule 12(b)(6) for failure to allege “actual malice” beyond a mere conclusory allegation about the defendant’s mind state).

As set forth in more detail below, the plaintiffs have failed to meet the basic pleading standard for defamation claims with regard to every single statement in the Complaint. Each of the statements complained of suffers from at least one fatal flaw: Defendants Long and Schaeffer are not accused of making *any* of the statements at issue, which are conceded to have been made almost exclusively by third parties; the few statements attributed to Defendants Calhoun and Eaton are expressions of opinion and rhetorical hyperbole, and therefore protected under the First Amendment; liability for hosting the unattributed statements online is categorically barred by federal statute; and the plaintiff corporations are public figures and have failed to allege that any of the statements were made with “actual malice”—that is, with knowing falsity.

This last failure underscores the urgency of the present motion. The plaintiffs, as a result of their own actions, are public figures embroiled in a public controversy about racial and environmental justice, and the defendants are their chief critics and adversaries in this public

debate. The statements listed in the Complaint not only fail to support a claim for defamation—they lie at the very core of the First Amendment’s protection. No conceivable amendment to the Complaint could change the fact that the First Amendment prevents the plaintiffs, as public figures, from securing monetary judgment against citizen-activists who have spoken out in opposition to a landfill in their community, expressing their beliefs about its risks and harms. And that remains true even if those activists are less than scientifically precise in their public statements about the landfill; indeed, this is precisely the “breathing space” contemplated by the Supreme Court’s seminal First Amendment jurisprudence. This Court should decline to permit the plaintiffs to use the judiciary as a forum for a policy dispute, or, worse, for intimidating citizen-activists into silence on matters of immense public concern in their community.

In light of its fatal flaws and improper purpose, the Complaint should be dismissed with prejudice.

II. The vast majority of the statements upon which the libel claims are based are not alleged to have been made by any of the defendants, and are therefore not actionable.

A. Defendants [REDACTED] are not alleged to have made any of the statements in the Complaint, and all claims against them must be dismissed.

The statements upon which the plaintiffs base the libel claims against Defendants [REDACTED] are set forth in paragraphs 22, 24, and 26 of the Complaint.¹⁰ *See* Am. Compl. ¶¶ 22, 24, 26, 34. These statements are alleged to have been posted to the Black Belt Citizens website and Facebook page. *See id.* ¶¶ 21–26. The plaintiffs do not allege, however, that any of these statements was spoken, written, or posted by [REDACTED]. Thus, under fundamental principles of Alabama tort law, neither [REDACTED] has committed any tort. *See, e.g., Ex*

¹⁰ There are no slander claims against these defendants.

parte Windom, 840 So. 2d 885, 888 (Ala. 2002) (“Liability for slander or libel, like liability for any tort, depends on . . . [a] wrongful act *by the defendant* . . .” (emphasis added)). The claims against these individuals are therefore baseless and must be dismissed.

To the extent there is any discernible theory for liability against [REDACTED] on the face of the Complaint, it appears to be based on the allegation that the statements at issue—although not written, spoken, or posted by either of these individuals—were hosted on the website and Facebook page of Black Belt Citizens.¹¹ But even if the Complaint alleged that [REDACTED] had any involvement in maintaining the website or Facebook page—which it never does—this theory is definitively foreclosed by the federal Communications Decency Act (“CDA”), which states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider,” and expressly preempts state law—including state libel law—to the contrary. 47 U.S.C. § 230(c)(1), (e)(3); *see also Zeran v. Am. Online, Inc.*, 129 F.3d 327, 332 (4th Cir. 1997) (individuals accused of publishing defamatory statements are “clearly protected by § 230’s immunity”). Facebook and the Black Belt Citizens website are “interactive computer service[s]” under the CDA. *See, e.g., Klayman v. Zuckerberg*, 753 F.3d 1354, 1357 (D.C. Cir. 2014); *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008); *Fraley v. Facebook, Inc.*, 830 F. Supp. 2d 785, 801 (N.D. Cal. 2011). Since Long and

¹¹ Paragraph 24 of the Complaint states that the “Defendants allege [the Facebook statements] were written and posted . . . without their prior knowledge or approval,” and urges the Court to “[t]ak[e] this allegation to be true.” Am. Compl. ¶ 24 & n.9. Accordingly, the plaintiffs have not only failed to attribute any statements to [REDACTED], but they expressly disavow this course of events as their theory of the case, proceeding instead on the theory that anonymous others wrote the statements and the defendants, through Black Belt Citizens, merely *hosted* them online. The plaintiffs have persisted in this theory despite having already had one opportunity to amend their pleadings.

Schaeffer are not alleged to have themselves written or published the statements at issue in the Complaint, the libel claims against them are barred by the CDA. *Cf. Klayman*, 753 F.3d at 1358–60 (affirming dismissal under Rule 12(b)(6) based on a CDA defense).

B. Defendants [REDACTED] are only alleged to have made three of the statements in the Complaint, and the rest of the statements cannot supply a basis for any defamation liability.

Among the statements upon which the defamation claims against Defendants Calhoun and Eaton are based, only three statements are alleged to have been made by either of these individuals. (These statements are addressed specifically below.) For precisely the reasons explained above, the rest of the statements therefore cannot supply a basis for any valid defamation claim: even if they were wrongful acts—and they are not—they are not wrongful acts *by the defendants*, and the CDA bars liability for hosting statements made by others.

III. All claims are predicated on non-actionable statements of opinion and rhetorical hyperbole and must be dismissed.

The three statements alleged to have been made by [REDACTED]—the only “wrongful acts *by the defendants*” at issue in this litigation—consist exclusively of expressions of concern, opinion, outrage, and non-literal rhetoric made by individuals who have never held themselves out to be scientists or lawyers, and who have spoken in the context of a heated public debate about matters of core political concern. These statements are expressive, imaginative, evaluative, and at times hyperbolic, but they do not contain provably false assertions of fact, and they therefore fall squarely outside the domain of defamation law and within the right to free speech.

The three statements are as follows (all emphases in the original):

- I feel like I’m in prison, we’re **suffocated by toxic pollution** & extreme poverty. Where are my freedoms? This is an environmental injustice & it’s happening in Uniontown & everywhere[.] Am. Compl. ¶ 24.

- Its a landfill, its a tall mountain of coal ash and it has affected us. **It affected our everyday life.** It really has done a lot to our freedom. **Its another impact of slavery.** . . . Cause we are in a black residence, things change? And you can't walk outside. And **you can not breathe. I mean, you are in like prison.** I mean, its like **all your freedom is gone.**

As a black woman, our voices are not heard. EPA hasn't listened and ADEM has not listened. Whether you are white or black, rich or poor, it should still matter and **we all should have the right to clean air and clean water.** I want to see EPA do their job. Am. Compl. ¶¶ 26, 39 (alteration in original).

- We are tired of being taken advantage of in this community The living around here can't rest because of the toxic material from the coal ash **leaking into creeks and contaminating the environment,** and the deceased can't rest because of **desecration of their resting place.** Am. Compl. ¶¶ 26, 37.

For the reasons explained below, none of these statements can properly give rise to defamation liability.

A. Statements of opinion and rhetorical hyperbole cannot give rise to defamation liability.

In a defamation case, in order for a statement to be facially actionable it must be “sufficiently factual to be susceptible of being proved true or false.” *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21 (1990); *see also Kelly*, 624 So. 2d at 550–51 (noting that the same limit on liability exists as a matter of Alabama law). Accordingly, if “the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable.” *Marshall v. Planz*, 13 F. Supp. 2d 1246, 1257 (M.D. Ala. 1998) (quoting *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222 (7th Cir. 1993)). The purpose of this principle is to preserve the “conventional give-and-take in our economic and political controversies” between persons with conflicting ideas. *Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers, AFL-CIO v. Austin*, 418 U.S. 264, 284 (1974); *see also Gertz*, 418 U.S. at 339–40 (“However pernicious an opinion may seem, we depend for

its correction not on the conscience of judges and juries but on the competition of other ideas.”). It also “provides assurance that public debate will not suffer for lack of imaginative expression or the rhetorical hyperbole which has traditionally added much to the discourse of our Nation,” and “reflects the reality that exaggeration and non-literal commentary have become an integral part of social discourse.” *Horsley v. Rivera*, 292 F.3d 695, 701 (11th Cir. 2002) (quotation marks omitted).

In assessing whether a statement contains a provably false assertion of fact, context is crucial. As the Eleventh Circuit has admonished: when a person “engage[s] in an emotional debate on a highly sensitive topic[,] . . . a reasonable [reader or listener] would infer that [the] statement was more an expression of outrage than an accusation of fact.” *Id.* at 702. Similarly, courts have repeatedly observed that “Internet message boards and . . . communication platforms are generally regarded as containing statements of pure opinion rather than statements or implications of actual, provable fact.” *Ghanam v. Does*, 845 N.W.2d 128, 144 (Mich. Ct. App. 2014); *see also Krinsky v. Doe 6*, 72 Cal. Rptr. 3d 231, 247 (Ct. App. 2008) (“When a defamation action arises from debate or criticism that has become heated and caustic, as often occurs when speakers use Internet chat rooms or message boards, a key issue before the court is whether the statements constitute fact or opinion.”); *Doe v. Cahill*, 884 A.2d 451, 465 (Del. 2005) (“[Social media postings] lack the formality and polish typically found in documents in which a reader would expect to find fact.”); *Silvercorp Metals Inc. v. Anthion Mgmt. LLC*, 959 N.Y.S.2d 92, at *2 (Sup. Ct. 2012) (mem.) (“Within the broader social context, the [statement] on the internet, where debate is often caustic and free-wheeling, is reasonably understood as expressing the opinion of the writer.”).

B. The statements made by Defendant [REDACTED] contain no provably false assertions of fact.

The first statement in the Complaint attributed to [REDACTED] was posted to the Black Belt Citizens Facebook page on November 18, 2015: “I feel like I’m in prison, we’re **suffocated by toxic pollution** & extreme poverty. Where are my freedoms? This is an environmental injustice & it’s happening in Uniontown & everywhere[.]” Am. Compl. ¶ 24 (emphasis in original).

This is precisely the sort of expression of political outrage—made in the context of a heated public debate—that as a matter of law is insulated from defamation liability. No reasonable reader or listener would conclude that the phrases, “I feel like I’m in prison,” and “we’re suffocated by toxic pollution,” were meant to be taken literally—that is, that [REDACTED] is actually in prison or suffocating. Indeed, [REDACTED] begins the statement with the words, “I feel,” thus indicating that she is expressing a subjective reaction. Nor can it reasonably be inferred that by using the word “toxic,” [REDACTED] was making a scientific or legal assertion. [REDACTED] has not held herself out as an environmental scientist or implied the existence of any undisclosed scientific facts. As is plain from the context of the statement—which was posted to the social media webpage of a concerned-citizens’ group—she was engaging in hyperbolic rhetoric. When, as here, assertions that might otherwise have a provable basis in fact are made in the context of a heated political debate, courts have routinely found them to be non-actionable. *See, e.g., Old Dominion*, 418 U.S. at 284 (calling plaintiff a “traitor”); *Greenbelt Coop. Publ’g Ass’n v. Bresler*, 398 U.S. 6, 14 (1970) (accusing plaintiff of “blackmail”); *Horsley*, 292 F.3d at 702 (calling plaintiff an “accomplice to homicide”); *U.S. Steel, LLC v. Tieceo, Inc.*, 261 F.3d 1275, 1294 (11th Cir. 2001) (comparing plaintiff to a mass murderer).

The second statement attributed to (b) (6) Privacy, (b) (7)(C) alleged to have been made during a radio interview and also reproduced verbatim in a February 25, 2016 post to the Black Belt Citizens Facebook page, is as follows:

Its a landfill, its a tall mountain of coal ash and it has affected us. **It affected our everyday life.** It really has done a lot to our freedom. **Its another impact of slavery.** . . . Cause we are in a black residence, things change? And you can't walk outside. And **you can not breathe. I mean, you are in like prison.** I mean, its like **all your freedom is gone.**

As a black woman, our voices are not heard. EPA hasn't listened and ADEM has not listened. Whether you are white or black, rich or poor, it should still matter and **we all should have the right to clean air and clean water.** I want to see EPA do their job.

Am. Compl. ¶¶ 26, 39 (alteration and emphasis in original).

This statement, like the previous one, consists of opinion and hyperbole that cannot support a viable defamation claim. When (b) (6) Privacy, (b) (7)(C) asserts that the presence of a landfill in her town “affected [the] everyday life” of the people in the town, or that it “has done a lot to [their] freedom,” she is simply expressing her opinion that she and others have been emotionally affected by the presence of a large landfill in town. These subjective statements are not capable of being confirmed or refuted, and are therefore not actionable. *See Milkovich*, 497 U.S. at 22 (drawing a distinction, for defamation purposes, between “a subjective assertion” and “an articulation of an objectively verifiable event”); *Marshall*, 13 F. Supp. 2d at 1258 (finding an assertion of the use of poor medical judgment to be a non-actionable “subjective opinion concerning the quality of care with which [the plaintiff] treated his patients”); *Kelly*, 624 So. 2d at 550–51 (finding that questioning the plaintiff’s ethics was a non-actionable expression of opinion).

(b) (6) Privacy, (b) (7)(C) also asserted that she “can’t walk outside” and “can not breathe,” that she is “like in prison,” and that “all [her] freedom is gone.” As explained above, however, no

reasonable listener would conclude that comparisons to being in prison and to suffocating are literally true. This is hyperbolic speech of precisely the sort that, according to the Eleventh Circuit, “add[s] much to the discourse of our Nation” and “ha[s] become an integral part of social discourse,” and is therefore protected under the First Amendment. *Horsley*, 292 F.3d at 701.¹²

C. The statement made by Defendant [REDACTED] contains no provably false assertions of fact.

The statement attributed to [REDACTED] was allegedly uttered at a press conference held on December 4, 2015 and then posted verbatim on the Black Belt Citizens Facebook page on December 5, 2015: “We are tired of being taken advantage of in this community The living around here can’t rest because of the toxic material from the coal ash **leaking into creeks and contaminating the environment**, and the deceased can’t rest because of **desecration of their resting place**.” Am. Compl. ¶¶ 26, 37 (emphasis in original).

This statement, like those attributed to [REDACTED] consists exclusively of opinion and rhetoric, and therefore cannot as a matter of law give rise to defamation liability. As explained above, statements that may otherwise be provably false often assume a mantle of non-literal rhetoric when made about sensitive topics in the context of a heated political debate. *See Horsley*, 292 F.3d at 702. [REDACTED] is a member of a political activist group who has engaged in

¹² The remainder of [REDACTED]’s second statement consists of (a) innocuous assertions that are neither defamatory nor factually false, and (b) statements about the EPA or the ADEM that do not refer to the plaintiffs. It cannot be disputed that Arrowhead Landfill is, in effect, a “mountain of coal ash,” and this statement does no reputational harm to the plaintiffs because it is an accurate description of the landfill that they operate. [REDACTED]’s assertion that the “EPA hasn’t listened and ADEM has not listened,” and that she “want[s] to see EPA do their job,” are not actionable because they do not “concern[] the plaintiff[s].” *Drill Parts*, 619 So. 2d at 1289; *see also Lloyd v. Cmty. Hosp. of Andalusia, Inc.*, 421 So. 2d 112, 113 (Ala. 1982) (affirming dismissal of defamation claim because the statement at issue did not refer to the plaintiff).

core political speech; he is not a scientist or a lawyer, and the statement is not based on any undisclosed facts. He therefore cannot reasonably be understood to be making scientific or legal claims about contamination or toxicity. Much as the Supreme Court has recognized that accusations of treason or blackmail—although capable of defamatory meaning in certain contexts—are not actionable when used in a non-literal, non-legal sense, *see Old Dominion*, 418 U.S. at 284 (treason); *Greenbelt*, 398 U.S. at 14 (blackmail), so too is [REDACTED] use of the words “toxic” and “contaminating” not reasonably to be construed in context as a literal assertion of scientific or legal fact. To conclude otherwise would be to stifle [REDACTED] ability to engage in the political rhetoric that is at the core of the First Amendment’s protections.

The same is true of [REDACTED] statement that “the deceased can’t rest because of desecration of their resting place.” To begin this phrase with an assertion about the dead in their resting places is to establish at the outset a non-literal, rhetorical tone. And the word “desecrate”—which means “[t]o divest (a thing) of its sacred character,” *Desecrate*, Black’s Law Dictionary (10th ed. 2014)—has an inherently subjective connotation. This phrase, in other words, contains no actionable assertions of fact.

Finally, to the extent the plaintiffs base their claims against [REDACTED] on his statement that he and others “are tired of being taken advantage of,” this phrase is not actionable because it expresses a subjective reaction of frustration and emotional fatigue, and therefore cannot be proven to be false. *See Milkovich*, 497 U.S. at 22; *Marshall*, 13 F. Supp. 2d at 1258; *Kelly*, 624 So. 2d at 550–51.

Because none of the three statements in the Complaint that are attributed to either [REDACTED] is facially actionable, the claims against these defendants must be dismissed.

See, e.g., Church of Scientology of Cal. v. Cazares, 638 F.2d 1272, 1286 (5th Cir. 1981) (noting that whether a statement is capable of defamatory meaning can be resolved as a matter of law).¹³

IV. All claims in any event must be dismissed because the plaintiffs are public figures and they have not plausibly alleged actual malice.

A. Actual malice must be alleged in defamation cases involving public figures.

Especially in the contentious world of political debate, the threat of penalty for making a false statement may very well inhibit speakers from making true statements. *See Gertz*, 418 U.S. at 340 (“[P]unishment of error runs the risk of inducing a cautious and restrictive exercise of the constitutionally guaranteed freedoms of speech and press.”). That is why the Supreme Court has repeatedly held that “First Amendment freedoms need breathing space to survive.” *Citizens United v. Fed. Elections Comm’n*, 558 U.S. 310, 329 (2010); *see also Gertz*, 418 U.S. at 341 (“The First Amendment requires that we protect some falsehood in order to protect speech that matters.”). Thus, to ensure that the public debate is “uninhibited, robust, and wide-open,” the Supreme Court has prescribed a scienter requirement in defamation cases—like this one—that pose particular risks to the freedom of speech and of the press. *N.Y. Times*, 376 U.S. at 270; *see also Hutchinson v. Proxmire*, 443 U.S. 111 (1979); *Gertz*, 418 U.S. at 340.

Public officials and public figures who enter the limelight assume a “risk of closer public scrutiny,” and the public’s interest in their affairs is correspondingly greater. *Gertz*, 418 U.S. at 344–45. Accordingly, public officials and public figures cannot recover for defamation without showing that the defamatory statement “was made with ‘actual malice’—that is, with knowledge

¹³ Although none of the remaining statements is alleged to have been made by any of the defendants, the defendants note for purposes of completeness that these statements—for precisely the reasons that apply to the statements attributed to (b) (6) Privacy, (b) (7)(C) Enforcement Privacy—are also non-actionable expressions of opinion and rhetorical hyperbole, and are therefore legally deficient on multiple overlapping grounds.

that it was false or with reckless disregard of whether it was false or not.” *N.Y. Times*, 376 U.S. at 279–80 (public officials); *see also Curtis Publ’g Co. v. Butts*, 388 U.S. 130 (1967) (public figures).

The designation of “public figure” status may rest on either of two bases. *Gertz*, 418 U.S. at 351. “In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts.” *Id.* In other cases, “an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.” *Id.* In either instance, “such persons assume special prominence in the resolution of public questions,” and they must therefore demonstrate “actual malice” before recovering for defamation. *Id.*

B. Plaintiffs Green Group and Howling Coyote are general-purpose public figures.

The Supreme Court defines a general-purpose public figure as one who has achieved “general fame or notoriety in the community, and pervasive involvement in the affairs of society.” *Gertz*, 418 U.S. at 352. Although the Eleventh Circuit has not expressly weighed in on the matter, other lower federal courts, addressing how to apply the public-figure definition to non-natural persons, have repeatedly observed that the reasons for allowing suits for defamation—protecting “the essential dignity and worth of every human being,” *Milkovich*, 497 U.S. at 22—are not implicated in cases involving the reputations of corporations, *see, e.g., Brown & Williamson Tobacco Corp. v. Jacobson*, 713 F.2d 262, 273 (7th Cir. 1983) (“[I]f the purpose of the public figure-private person dichotomy is to protect the privacy of individuals who do not seek publicity or engage in activities that place them in the public eye, there seems no reason to classify a large corporation as a private person.”); *Martin Marietta Corp. v. Evening Star Newspaper Co.*, 417 F. Supp. 947, 955 (D.D.C. 1976) (“It is quite clear from the [Supreme]

Court’s opinion [in *Gertz*] . . . that the values considered important enough to merit accommodation with interests protected by the first amendment are associated solely with natural persons, and that corporations, while legal persons for some purposes, possess none of the attributes the Court sought to protect.”). They have, accordingly, often given the definition a more expansive interpretation in cases involving corporate plaintiffs. *See, e.g., OAO Alfa Bank v. Ctr. for Pub. Integrity*, 387 F. Supp. 2d 20, 48 (D.D.C. 2005) (treating corporate plaintiffs as public figures *per se*); *Reliance Ins. Co. v. Barron’s*, 442 F. Supp. 1341, 1347–48 (S.D.N.Y. 1977) (recognizing that corporations have different interests in protecting reputations and finding that corporate plaintiff was a general-purpose public figure by virtue of its size and public status).

The Alabama Supreme Court, for its part, has held that an insurance company “subject to close regulation by [the] government . . . invite[s] attention and comment,” is “clothed with the public interest,” and has sufficient “power and influence” such that it is a public figure “for purposes of [Alabama’s] libel laws.” *Am. Benefit Life Ins. Co. v. McIntyre*, 375 So. 2d 239, 242 (Ala. 1979),¹⁴ *overruled on other grounds by Pemberton v. Birmingham News Co.*, 482 So. 2d 257 (Ala. 1985); *see also Coronado Credit Union v. Koat Television, Inc.*, 656 P.2d 896, 904 (N.M. Ct. App. 1982) (holding that credit unions are “so involved with the public interest” and

¹⁴ On an application for rehearing—which was denied—the Court also addressed whether the corporate plaintiff was a limited-purpose public figure and answered this question in the affirmative, deploying precisely the same reasoning. *See id.* at 250 (“The company [plaintiff] was regulated by the State Insurance Commissioner. There is a public interest in such companies licensed by the state. By entering into such a business, a company has voluntarily subjected itself to public scrutiny. The investigation of the Insurance Commissioner is an expected incident of an insurance company’s business.”).

“comprehensively regulated” under state law that they are public figures and must prove actual malice).¹⁵

Applying the reasoning of the federal cases cited above and of the Alabama Supreme Court in *McIntyre*, it is plain that the plaintiffs in this case are public figures. Nothing about the defendants’ political rhetoric concerning the presence of the Arrowhead Landfill in Uniontown implicates “the essential dignity and worth of [any] human being.” *Milkovich*, 497 U.S. at 22. Thus, in balancing the interests of the defendants in engaging in core political discourse against the interests of the plaintiffs in preserving their reputation—the essential task in any defamation lawsuit—there is no basis for favoring the latter over the former. But even more to the point: the plaintiffs are companies operating in a heavily-regulated industry that is subject to pervasive public oversight at both the state and federal levels. *See* Am. Compl. ¶¶ 1–2 (describing the plaintiffs); *id.* ¶¶ 19–20 (explaining the permits and inspections required of the plaintiffs to operate Arrowhead Landfill); *id.* Exs. B, C (setting forth extensive regulatory measures that apply to the handling of coal ash, the selection of coal ash repositories, and the management of landfills that contain coal ash).¹⁶ The plaintiffs have willingly and repeatedly participated in government permitting processes subject to public oversight; they cannot now credibly claim to

¹⁵ Although the public-private figure distinction is a question of federal constitutional law, the states are free to define liability for defamation under state law as they see fit, so long as they remain within federal constitutional bounds. Accordingly, “resort to [state] case law” on the question of “[w]hether a plaintiff is a ‘public figure’” is appropriate as long as state law “provide[s] a broader”—and therefore more speech-protective—definition of this term. *Harris v. Quadracci*, 48 F.3d 247, 250 n.5 (7th Cir. 1995); *see also Michel*, 816 F.3d at 695 (recognizing state law as applicable in a diversity action for defamation where it was “broader and more protective of speech than the requirements found in the Federal Constitution”). The defendants are not aware of any Eleventh Circuit precedent that defines general-purpose public figure status more narrowly than the Alabama Supreme Court, but even if such precedent existed, the Alabama Supreme Court’s decision in *McIntyre* would control in this diversity action.

¹⁶ *See also* 40 C.F.R. Part 258 (setting forth federal regulatory criteria for managing municipal solid waste landfills such as Arrowhead Landfill).

be private persons for the purposes of pressing a defamation claim against those with opposing views on public policy. The plaintiffs are therefore public figures not only under the federal constitution, but also “for purposes of [Alabama’s] libel laws.” *McIntyre*, 375 So. 2d at 242.

C. Plaintiffs Green Group and Howling Coyote are limited-purpose public figures.

Even if they are not public figures for all purposes, the plaintiffs have undoubtedly “thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved,” *Gertz*, 418 U.S. at 345, and they must therefore still satisfy the “actual malice” requirement in order to state a viable claim of defamation.

The Eleventh Circuit and Alabama Supreme Court have both adopted the three-part test developed by the D.C. Circuit in *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287 (D.C. Cir. 1980), for determining whether a plaintiff is a limited-purpose public figure. *Little v. Breland*, 93 F.3d 755, 757 (11th Cir. 1996); *Cottrell v. Nat’l Collegiate Athletic Ass’n*, 975 So. 2d 306, 334 (Ala. 2007). Under *Waldbaum*, a court “must (1) isolate the public controversy, (2) examine the plaintiff’s involvement in the controversy, and (3) determine whether the alleged defamation was germane to the plaintiff’s participation in the controversy.” *Little*, 93 F.3d at 757 (alteration and quotation marks omitted).

1. Public controversies surrounding the establishment and continued operation of Arrowhead Landfill and the relocation of coal ash to Uniontown have existed since 2007.

The first prong of the *Waldbaum* test requires asking whether there existed a public controversy that was “more than merely newsworthy”—that is, whether there was an “issue [that] was being debated publicly and . . . had foreseeable and substantial ramifications for nonparticipants.” *Silvester v. Am. Broad. Cos.*, 839 F.2d 1491, 1495 (11th Cir. 1988) (citing *Waldbaum*, 627 F.2d at 1297). Issues that arise in heavily regulated industries or that have

received extensive public debate satisfy this criterion. *See Little*, 93 F.3d at 757; *Silvester*, 839 F.2d at 1495.

In this case, a controversy of indisputably public nature arose regarding the relocation of coal ash from the catastrophic spill in Tennessee in December 2008. *See* Am. Compl. ¶¶ 14, 15 & Exs. B, C. The choice of Arrowhead Landfill as the site for this coal ash was the subject of substantial public debate and regulatory attention. *See, e.g., id.* Exs. B, C (regulatory actions setting forth basis for disposal of coal ash from Kingston Fossil Plant and its relocation to the Arrowhead Landfill); Pillion Article (explaining an ongoing public debate about “concerns after the [Arrowhead] landfill accepted around 4 million tons of coal ash material from the . . . Tenn. spill in 2009”). In a broader sense, so too was the establishment and continued operation of Arrowhead Landfill in Uniontown since 2007. The landfill required extensive permitting, *see* Am. Compl. ¶ 19; was the subject of 183 public complaints to the ADEM since 2007 and a civil rights complaint to the EPA, *see supra* notes 8 & 9; Pillion Article (“Residents living just outside the . . . Arrowhead Landfill in Uniontown have had complaints about the facility since it opened in 2007 The Environmental Protection Agency has also agreed to investigate a complaint made against the Alabama Department of Environmental Management that ADEM violated Black Belt residents’ civil rights by renewing the landfill’s permit and allowing an expansion of the disposal area.”); and resulted in “numerous” inspections by both the ADEM and the EPA, Am. Compl. ¶ 20. The intense and well-documented public attention to an issue arising in a highly regulated industry plainly constitutes a “public controversy” under the first *Waldbaum* prong. *Silvester*, 839 F.2d at 1495.

2. The plaintiffs have been extensively involved in this controversy since December 2011.

The second *Waldbaum* prong requires assessing “the extent to which the plaintiffs are involved in the public controversy.” *Id.* at 1496. To satisfy this prong, “the plaintiff either (1) must purposely try to influence the outcome of the public controversy, or (2) could realistically have been expected, because of [its] position in the controversy, to have an impact on its resolution.” *Id.* (alteration and quotation marks omitted).

Green Group and Howling Coyote assumed ownership over Arrowhead Landfill on December 21, 2011. Am. Compl. ¶¶ 11–12. Since then, of course, they have had the ability to influence the operation of the landfill and the means by which coal ash is transported, treated, and stored in Uniontown. The second *Waldbaum* prong is thus easily satisfied. *See Little*, 93 F.3d at 758 (“Little’s choice to assume the position of leadership at the Mobile Convention & Visitors Corporation, an organization involving public scrutiny, shows a voluntary decision to place himself in a situation where there was a likelihood of public controversy.”); *Silvester*, 839 F.3d at 1497 (“Plaintiffs . . . thrust themselves into [a] position of prominence by voluntarily entering a strictly regulated, high-profile industry in which there were few major participants. By becoming important members of the regulated . . . industry, they invited public scrutiny, discussions, and criticism.”); *White v. Mobile Press Register, Inc.*, 514 So. 2d 902, 904 (Ala. 1987) (“[The plaintiff’s] prior association with E.P.A., and his choice of a career as a high level executive in [the hazardous waste] industry[, which] is the subject of much public interest and concern[,] show a voluntary decision to place himself in a situation where there was a likelihood of public controversy.”).

3. The allegedly defamatory statements about the landfill are germane to the plaintiffs' participation in the public controversy.

The allegedly defamatory statements in the Complaint concern the existence and operation of Arrowhead Landfill and its effects on Uniontown and its citizens, Am. Compl. ¶¶ 22, 24, 26, 29, 37, both of which phenomena are self-evidently attributable to Green Group and Howling Coyote, the owners of the landfill. The statements are therefore undoubtedly “germane to the plaintiff[s’] participation in the controversy” under the third *Waldbaum* factor. *Little*, 93 F.3d at 757.

D. The plaintiffs have not alleged actual malice.

Because the plaintiffs are public figures, they must allege with sufficient factual plausibility that the statements in the Complaint were made with “actual malice”—i.e., “with knowledge that [they were] false or with reckless disregard of whether [they were] false or not.” *N.Y. Times*, 376 U.S. at 279–80; *see also Garrison v. Louisiana*, 379 U.S. 64, 74 (1964) (“[O]nly those false statements made with the high degree of awareness of their probable falsity . . . may be the subject of . . . civil . . . sanctions.”).

Even assuming that any of the rhetoric upon which the defamation claims are based could be taken literally, there are no factual allegations in the Complaint that support any inference that such statements were made with a “high degree of awareness of their probable falsity.” *Garrison*, 379 U.S. at 74. The only allegation of actual malice is the following purely conclusory recital of the scienter element of a cause of action for libel: “Plaintiffs aver that the Defendants published the above material knowing of its falsity and sensationalizing sting, with malice by intentional action or with reckless disregard for the truth” Am. Compl. ¶ 34; *see also id.* ¶¶ 23, 38, 40 (same). This is a legal conclusion, not a factual allegation, and it therefore falls short of the plausibility requirement of Rule 8(a)(2). *See Iqbal*, 556 U.S. at 678 (“Threadbare recitals of the

elements of a cause of action, supported by mere conclusory statements, do not suffice.”). In fact, the Eleventh Circuit has affirmed the dismissal of a defamation complaint that alleged malice at precisely this level of generality. *See Michel*, 816 F.3d at 703–04 (“Michel alleges in a purely conclusory manner that the defendants were ‘reckless’ in publishing the article. Allegations such as these amount to little more than ‘[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,’ which are insufficient to support a cause of action.” (quoting *Iqbal*, 556 U.S. at 678)). Under the specific holding of *Michel* and the principles of *Iqbal* and *Twombly*, the defamation claims must be dismissed for failure to state a claim.

But the defects in the allegation of scienter do not stop there. Somewhat counterintuitively, the plaintiffs have incorporated a document into their pleadings that further undermines their conclusory allegation of malice and establishes conclusively that actual malice could not be alleged or proven in this case. Exhibit B to the Complaint is the *Administrative Order and Agreement on Consent* entered into by the EPA and the TVA in the wake of the December 2008 coal ash spill in Tennessee, setting forth a plan for the administrative response to this disaster. Among the findings of fact in this document are the following:

- On January 21, 2009, TVA submitted written notification to the Tennessee Emergency Response Commission, pursuant to which TVA reported a discharge of 5.4 million cubic yards of ash *containing the following constituents: arsenic, beryllium, chromium, copper, lead, mercury, nickel, zinc, antimony, cadmium, silver, selenium, thallium, and vanadium oxide.*
- On February 4, 2009, EPA . . . and [the Tennessee Department of Environment and Conservation] issued a letter to TVA in which EPA provided notice to TVA that *EPA considers the release [of coal ash] to be an unpermitted discharge of a pollutant in contravention of the Clean Water Act.*
- EPA has classified arsenic *as a known human carcinogen*; and long-term exposure of aquatic organisms to high levels of metals like arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, and zinc *may cause decreases in survival, growth, or reproduction* to those aquatic organisms.

Am. Compl., Ex. B at 7–8, ¶¶ 15, 16, 19 (emphasis added). The document also concludes that “[t]he conditions described in the Findings of Fact . . . constitute an actual or threatened ‘release’ of hazardous substances from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).” *Id.*, Ex. B at 8, ¶ 20.e.¹⁷

This document defeats any conceivable inference that words and phrases such as “toxic,” “pollutant,” and “coal ash leaking into creeks and contaminating the environment,” Am. Compl. ¶¶ 24, 26, 37—even if they could be construed as literal assertions of fact—were spoken with a “high degree of awareness of their *probable falsity*.” *Garrison*, 379 U.S. at 74 (emphasis added). It demonstrates that the defendants’ assertions were *probably true*—and, by implication, could not have been made with the requisite malice. Even taking the EPA’s findings with a heavy dose of skepticism, they are still the factual findings of a federal agency made in the aftermath of a coal ash disaster that contaminated the environment and precipitated the transfer of coal ash to Uniontown; at an absolute minimum, they supply a reasonable basis for a person—especially a non-expert—to conclude that coal ash is a risky and toxic pollutant, and that Arrowhead Landfill poses a threat of contaminating Uniontown and affecting the lives of its inhabitants. The defendants therefore could not, as a matter of law, have made any of the statements in the Complaint with actual malice.¹⁸

¹⁷ See also U.S. Env’t Protection Agency, *Frequently Asked Questions About the Coal Ash Disposal Rule* (July 9, 2015), <https://www.epa.gov/coalash/frequent-questions-about-coal-ash-disposal-rule> (“Coal ash contains contaminants like mercury, cadmium and arsenic associated with cancer and various other serious health effects.”).

¹⁸ Even if there were allegations or evidence that contradicted the findings in the *Administrative Order and Agreement on Consent*—and there is none—this document would still supply a reasonable basis for all of the statements in the complaint. See *N.Y. Times*, 376 U.S. at 287–88 (explaining that the actual malice standard does not impose a duty to make any reasonable investigation into the truth of an assertion or the validity of the evidence upon which it is based). Thus, not only have the plaintiffs failed to allege actual malice, but granting them

Conclusion

For the reasons explained above, the defendants respectfully request that the Court dismiss the Complaint with prejudice and enter Judgment in favor of the defendants.

June 2, 2016

Respectfully submitted,

Lee Rowland (*pro hac vice* pending)
Benjamin Good (*pro hac vice* pending)
Dennis Parker (*pro hac vice* pending)
Rachel Goodman (*pro hac vice* pending)
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leave to amend their Complaint to fix this deficiency would be futile. *See, e.g., Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1255 (11th Cir. 2008) (affirming denial of leave to amend on the basis of futility).

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2016, I did serve the above Memorandum through the Court's ECF filing system pursuant to Fed. R. Civ. P. 5(b)(2)(E) to the following counsel for all Plaintiffs:

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EXHIBIT 15

DECLARATION OF (b) (6), (b) (7)(C)

1. My name is (b) (6), (b) (7)(C). I am of legal age and competent to give this declaration. All of the information herein is based on my own personal knowledge unless otherwise indicated.

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

3. I submitted another declaration in this matter in 2014, but I submit this second declaration to describe the ongoing desecration of the New Hope Cemetery in Uniontown by the Landfill and Landfill operators. I have family in that cemetery, and it is a travesty and injustice the way that the Cemetery has been carelessly treated and harmed.

4. The New Hope Cemetery is located right next to the Landfill. It is a historically black cemetery in what was a segregated town. A church once stood in that site also.

5. The Cemetery is personally meaningful and important to me because I have a brother buried there, as well as other close kin. My brother, (b) (6) - Privacy, died at age two. I would like to visit his grave regularly, but the impacts from the Landfill have made that unpleasant to do, which simply devastates me and breaks my heart.

6. When the Landfill was installed, the operator of the Landfill promised they were going to maintain access to the Cemetery and keep it maintained. They have not done so. Instead, they put a water monitoring well right in the grounds of the cemetery. They also failed to keep up the cemetery—there are bushes and brambles all over the place. It has gotten so bad that now I can't even find my brother's grave.

7. Another effect the Landfill has on the cemetery is the odor. The odor is powerful and acrid, making visiting family members in the cemetery an unpleasant experience that does not hold sacred their loss. The odor is overpowering and brutal, a physical presence that slaps you in the face in what should be a quiet, peaceful moment remembering family members past.

8. Most recently, in 2015, the Landfill sent in a a bulldozer, which ran over part of the cemetery and straight across my ancestors' graves. This is an unbelievable and devastating attack on the sanctity of the cemetery. It is now impossible to find grave sites and to pay proper respects in this place. I cannot believe what the Landfill operators have done here, and I do not believe they would be able to get away with this in a white cemetery or one in a community with more money.

9. The Landfill did not notify me before sending the bulldozer into the Cemetery. The Landfill did not consult me on its plans for bulldozing a path through the Cemetery.

10. I joined other members of the community in complaining to the Landfill about what they had done. The lawyer for the Landfill, Mike Smith, drew up papers that he wanted members of the community to sign but we weren't represented by lawyers and I didn't agree to sign the papers.

11. Even after we complained to the Landfill, they have continued bulldozing and disturbing the Cemetery. There was a bulldozer in the Cemetery in the month of February, 2016.

12. The Landfill is trying to get people in the community to look the other way. They had a meeting recently where they offered some community members a free dinner. But what we want is for the cemetery to be preserved and held as the sacred space it is, not to have the company simply make it look like everything is all right.

13. The Landfill claims that the Cemetery is on Landfill property, and they have said they would deed the cemetery to a non-profit. I do not know the full legal status of the Cemetery, but if the Landfill does own it, it was wrong for them ever to buy it. I cannot believe this sacred final resting place of my family members would be owned by a stinky landfill that is polluting our town. Even if

the Landfill owns the Cemetery, they should not just use it and enter it like any old property, as they've done with the water monitoring well and the bulldozing.

14. Even if the Landfill owns the property on which the Cemetery is located, they should have maintained access to the graves, should have kept it up, and should not have disturbed the graves or any gravestones.

15. Before the Landfill brought in the bulldozer, had offered to join the Landfill operator in cleaning the Cemetery, but when the operator has visited the Cemetery, they have not called or communicated with me.

16. I could not be more sad and upset about the state of the cemetery. It's just not right that my brother's grave, and the graves of so many others from our community, are being treated this way.

17. When I saw what they had done to the Cemetery with the bulldozer, it was like a knife through my heart. To me, this is even worse than having to live as a sharecropper and the affronts and indignities of the past—we have fought for generations for our property, and now this is a new way to try to show us that we are not respected or fully citizens. I simply cannot believe this.

18. Are our rights worth nothing? Where is our local and state government? I cannot believe we still live in a place and time where this kind of very physical devastation to our civil rights is allowed.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed in Uniontown , Alabama on March 3 2016

(b) (6), (b) (7)(C)



EXHIBIT 16

(b) (6), (b) (7)(C)

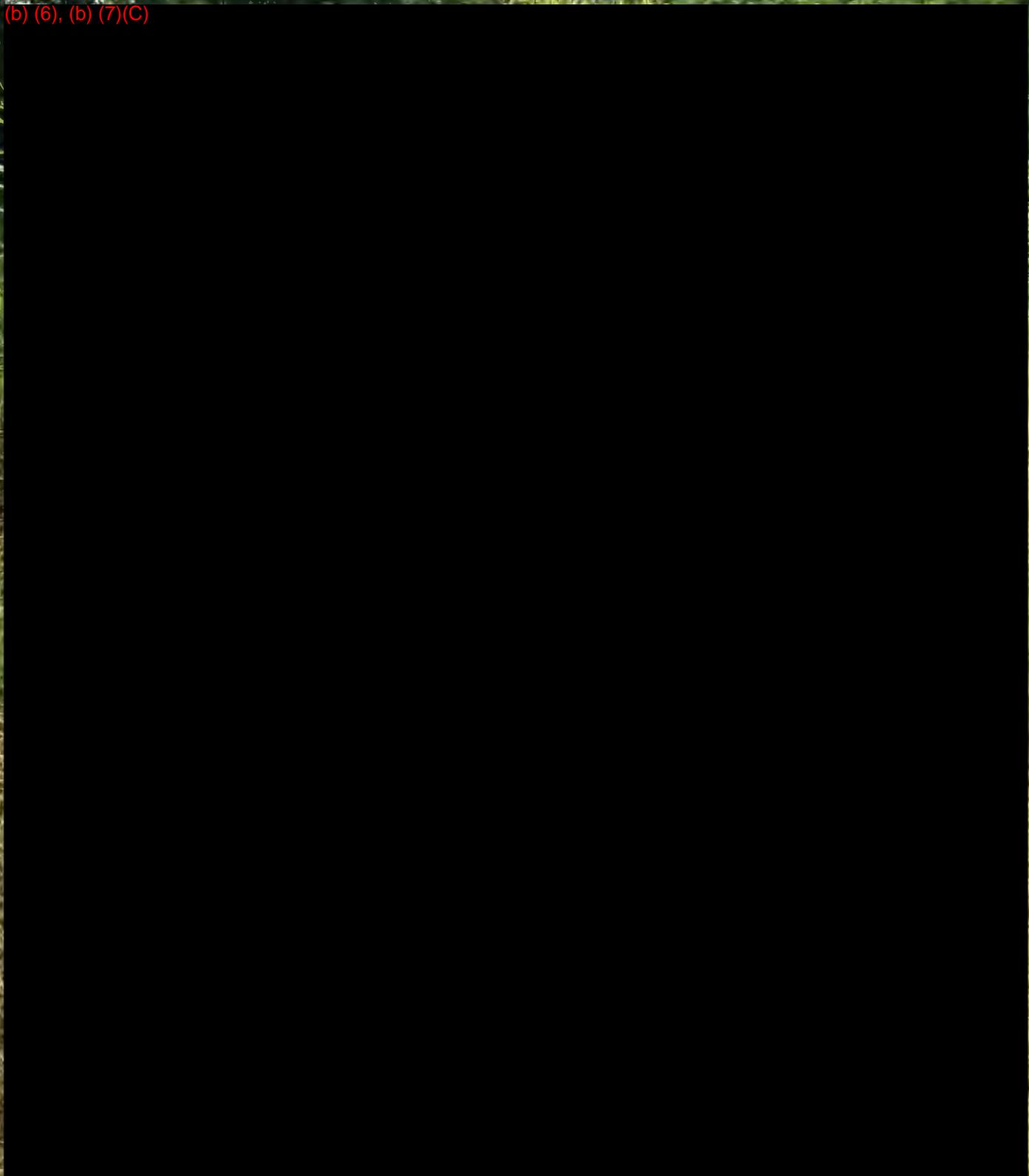


EXHIBIT 17

(b) (6), (b) (7)(C)

A photograph of a grassy field with a dense forest in the background. A large black rectangular redaction box covers the middle portion of the image, with the text '(b) (6), (b) (7)(C)' written in red above it. The foreground is filled with tall, green and brown grasses. The background consists of a thick line of green trees under a clear blue sky.

EXHIBIT 18

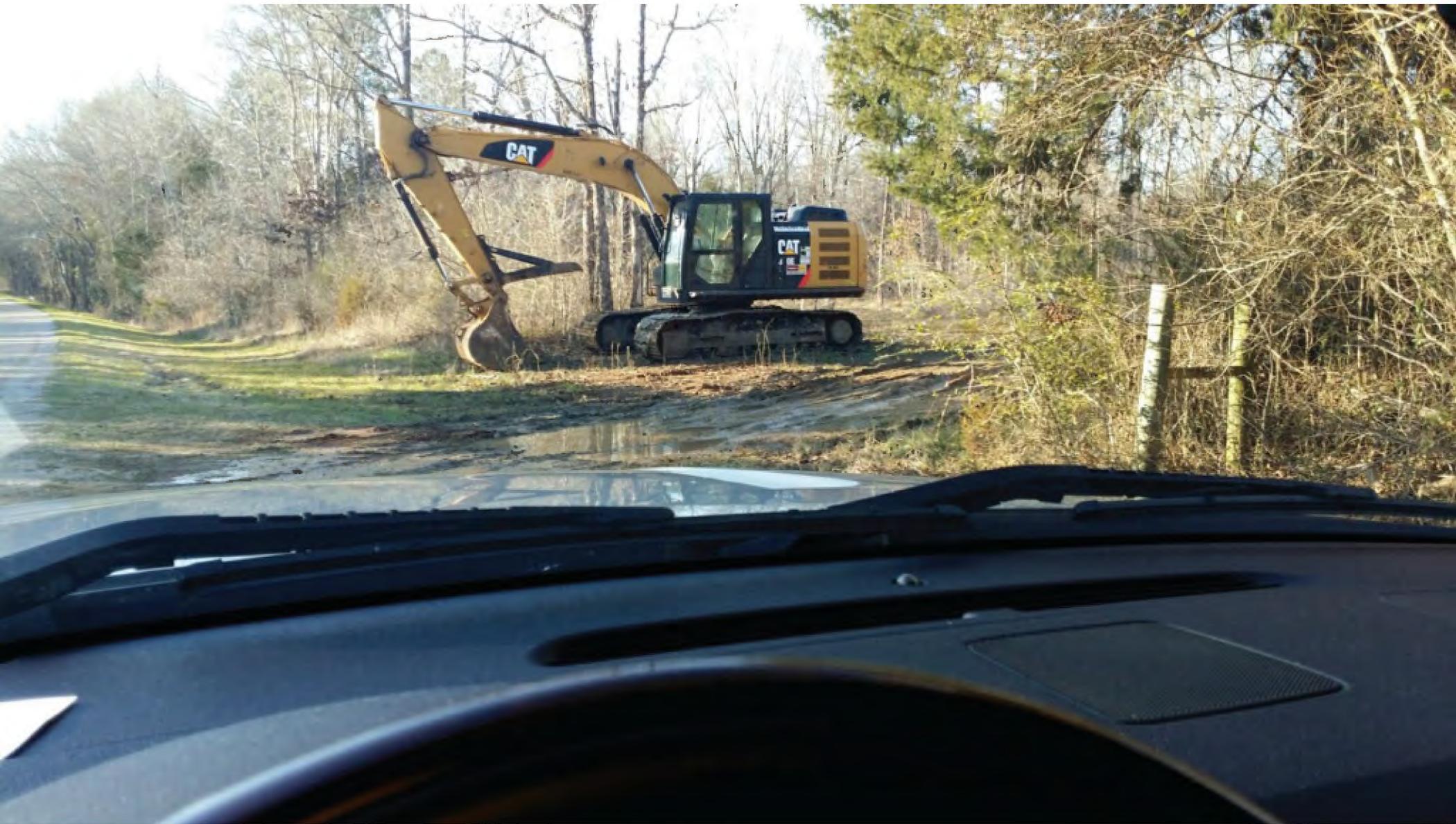


EXHIBIT 19

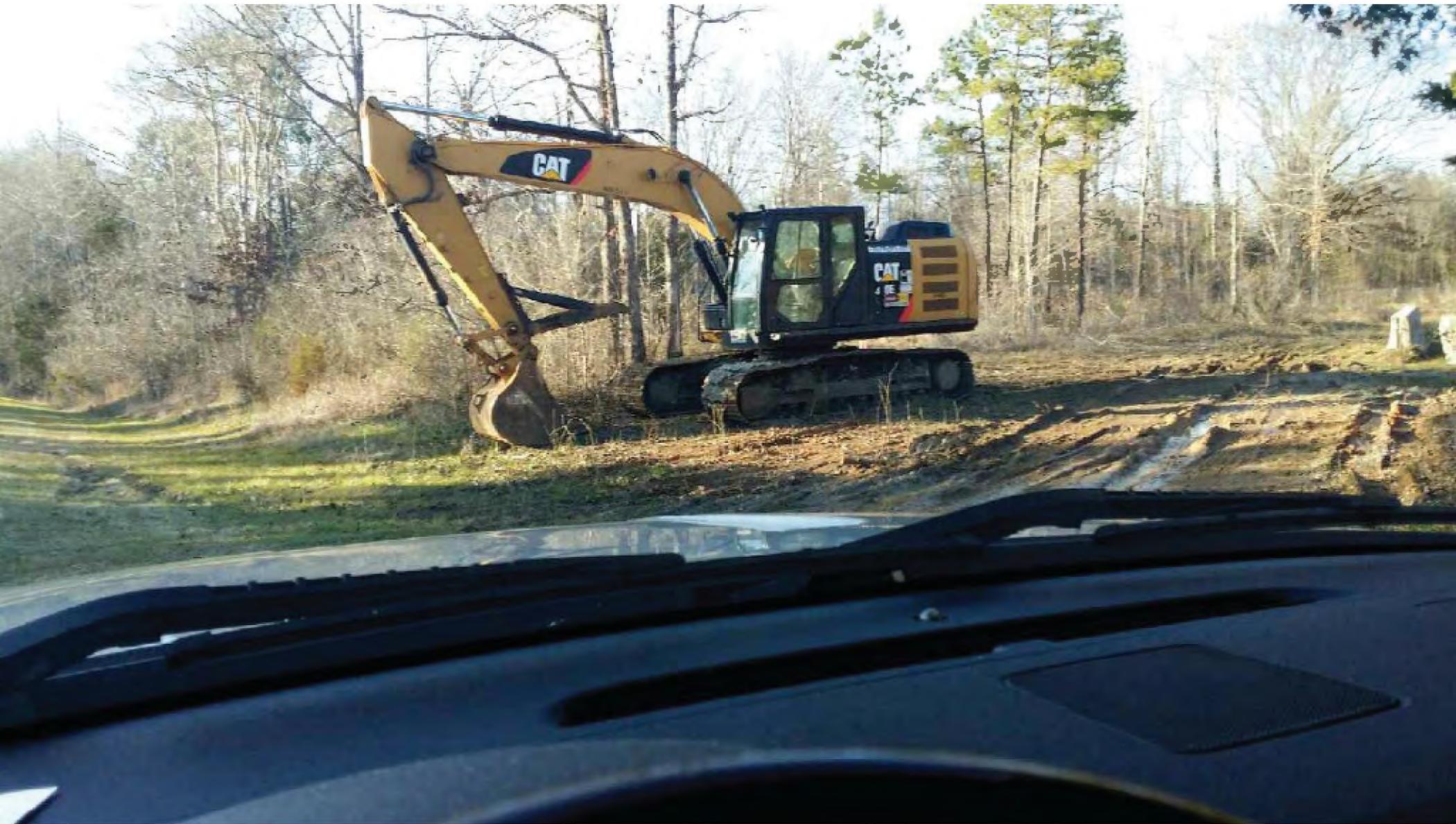


EXHIBIT 20

Upton, Hannah

From: Watson, Brent
Sent: Monday, July 06, 2015 8:23 AM
To: Upton, Hannah
Subject: FW: Arrowhead Landfill
Attachments: GreenGroupLettertoBBCFHJ.6-22-15.pdf; ATT00001.htm

Follow Up Flag: Follow up
Flag Status: Flagged

From: Michael Smith <msmith@smithstaggs.com>
Date: July 3, 2015 at 9:00:38 AM CDT
To: Phil Davis <pdd@adem.state.al.us>
Cc: Bill Hodges <bhodges@hhnt.com>, Joy Hammonds <jhammonds@gghcorp.com>
Subject: Arrowhead Landfill

Dear Mr. Davis:

We have just become aware that a letter sent to my client, Green Group Holdings, LLC ("GGH"), by (b) (6), (b) (7)(C) and others on behalf of "Black Belt Citizens Fighting for Health and Justice" appears on the ADEM website under the "General Correspondence" heading regarding GGH's Arrowhead Landfill (Permit No.: 53-03).

Green Group did not receive this letter until June 1, 2015 and responded to it on June 22, 2015 but failed to provide a copy of that response to ADEM since ADEM was not noted by (b) (6), et al., as being copied on the original letter.

We would appreciate your entry of our response in the Arrowhead Landfill's eFile under "General Correspondence".

Thank you in advance for your assistance in this matter.

Mike Smith

Michael D. Smith
Smith & Staggs, LLP
701 22nd Avenue, Suite 1
Tuscaloosa, AL 35401

Telephone 205.409.3140
Facsimile 205.409.3144
msmith@smithstaggs.com
(b) (6), (b) (7)(C)

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Thank you.



GREENGROUP

June 22, 2015

Black Belt Citizens Fighting for Health and Justice
P. O. Box 523
Uniontown, AL 36786

Dear (b) (6), (b) (7)(C) :

We received your letter regarding Arrowhead Landfill in Uniontown, Perry County, Alabama.

While Green Group Holdings appreciates your concern, most of the information you included in your letter is not factually accurate. I would like to take this opportunity to dispel some of your misconceptions.

"Arrowhead Landfill...is positioned in a rural residential area that is home to over 100 families..."

This is inaccurate, as there are only 38 dwellings located within one mile of the disposal cell.

"...the landfill is built over jurisdictional wetlands and waterways and provided the habitat for several endangered species."

During the permitting process, the proposed project corridor was surveyed with respect to jurisdictional wetlands. The initial permit application for the landfill, which resulted in the granting of the landfill permit by the Alabama Department of Environmental Management (ADEM), describes how field studies using Army Corps of Engineers (ACOE) methodology were conducted. These field studies identified the presence of 16 jurisdictional wetlands and 25 jurisdictional waters in the study corridor and determined that construction of the proposed landfill would not impact areas within the jurisdiction of the ACOE. A letter from ACOE concurring with this assessment was issued on May 13, 2003 and was included with the permit application.

Regarding endangered species, in June 2001, Ecological Solutions, Inc. performed an evaluation of the proposed landfill to assess the potential for impacts to threatened or endangered (T&E) species and their habitats. As part of this evaluation, a list of T&E species potentially present in Perry County was developed from a review of the U.S. Fish and Wildlife Service (USFWS). As described in the initial permit application, no federally protected or state protected species were observed within the proposed 1,100-acre parcel during the field studies. Habitat was not observed for any protected species of potential occurrence within the study corridor. The permit application included a letter from USFWS concurring with the results of the assessment.

"Many sites of historic importance were identified, including a cemetery with very old graves, and all of those were demolished during construction of the landfill."

This is not true. While there is a graveyard adjacent to the landfill entrance, it is on land Green Group does not own or control. There is no organized group maintaining the cemetery and it became badly overgrown. The cemetery was discovered during construction of the landfill and the Alabama Historical Commission was notified. The Historical Commission found no evidence of damage or disturbance of the cemetery. Nevertheless, the contractor sent in a crew to hand clear

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p 770.720.2717 f 770.720.2747 gghcorp.com

the cemetery and they removed all trees and undergrowth. The community was to have maintained the cemetery but it has since been grown over again.

"One of the layers of the liner required by EPA for an MSW landfill was omitted from the final design plans and construction."

This is false. Like any modern landfill, Arrowhead features a highly engineered liner system with not one, but two protective liners: a compacted clay composite liner and a polyethylene geomembrane liner. Arrowhead is in full compliance with requirements of the Environmental Protection Agency (EPA) as well as the Alabama Department of Environmental Management (ADEM).

"Selma Chalk is NOT impermeable; it shifts and cracks open during dry weather."

This is true as it relates to the surface soils in the area but untrue as it relates to the Selma Chalk. The thick Selma Group Chalk (545-563 feet thick at the GWM-2, 3 and 4 locations between the initial disposal cell and County Road 1) has a low permeability (1.0×10^{-6} to 1.0×10^{-8} cm/sec) and is a substantial natural barrier between the landfill waste units and the underlying regional Eutaw Sand aquifer. The travel time for water to pass through the chalk to the sand aquifer requires hundreds, if not thousands, of years.

"Runoff from the landfill has been tested at the ditch alongside the facility and in the creek across County Road 1 and found to contain arsenic and high levels of conductivity."

This is inconsistent with our test results and no proof has ever been offered for these allegations. No one has ever produced an independent third party test showing any elevated arsenic levels at any location on or near the landfill property. Regular inspections by certified ADEM inspectors have shown that no coal ash is escaping Arrowhead Landfill. Inspection reports are publicly available on the ADEM website.

"The facility has never provided any protections for the residents who live in proximity to the landfill, not even a fence around the perimeter of the property."

This is inaccurate. A fence already exists along County Road 1, and Green Group has complied with all the requirements of the permit. Furthermore, we have provided protections beyond what is required by the permit, including relocating the entrance to move all traffic away from the facility's neighbors at their request.

"The approach at Arrowhead has NOT provided 'significant value' to the community of Uniontown, as you claim; in fact, quite the contrary."

Residents of Uniontown and Perry County have benefitted in a number of ways from Arrowhead Landfill. Perry County received more than \$4 million from host fees during the 18 months of high volume disposal of Kingston coal ash – a portion of which provided for the upkeep and maintenance of county roads. During that time, approximately 60 jobs were created at wage rates far above the prevailing wage paid in Perry County. More than 50 of those jobs were from Perry County and many acquired transferable skills, such as operating articulating dump trucks, that would enhance their employability. Perry County residents also receive the benefit of free garbage disposal at the landfill, saving them a total of \$221,000 in disposal fees in 2014. Just in 2014 alone, Green Group has spent \$1.4 million with local Perry County companies.



Beyond the economic benefits provided by Arrowhead, Green Group has actively supported local schools and community initiatives. Some examples include:

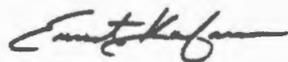
- Providing funding for backpacks and back-to-school supplies for every child in Perry County from Pre-K to 6th grade.
- Donating mandatory school uniforms to underprivileged students
- Sponsorship of two college-bound freshmen last year during Uniontown's Community Businesses Assisting Student Education (CBASE) campaign
- Sponsorship of community activities such as Uniontown's annual City Festival

In closing, I want to reiterate that Green Group takes great pride in our dedication to maintaining the highest standards of environmental and operational safety, and we are very proud of our track record on that account. Again, due to the publicity surrounding the Kingston coal ash spill, Arrowhead has been the most heavily inspected landfill in Alabama – by both ADEM and the EPA – and it has never once been cited for a violation.

I hope that in the future, Black Belt Citizens Fighting for Health and Justice will make an effort to research the facts and attempt to be more accurate in the way it portrays Arrowhead Landfill.

In an effort to provide you with more accurate information, I would like to personally invite your group on a tour of Arrowhead Landfill. Please call Joy Hammonds at (770) 720-2717 to set up a time to meet with me and take a tour of the site. If we can make that happen, I truly believe we can begin working together for the good of Perry County.

Sincerely,



Ernest Kaufmann
President and CEO
Green Group Holdings, LLC

6/10/10

EXHIBIT 21

(b) (6), (b) (7)(C)



EXHIBIT 22



EXHIBIT 23



(b) (6), (b) (7)(C)

EXHIBIT 24



EXHIBIT 25



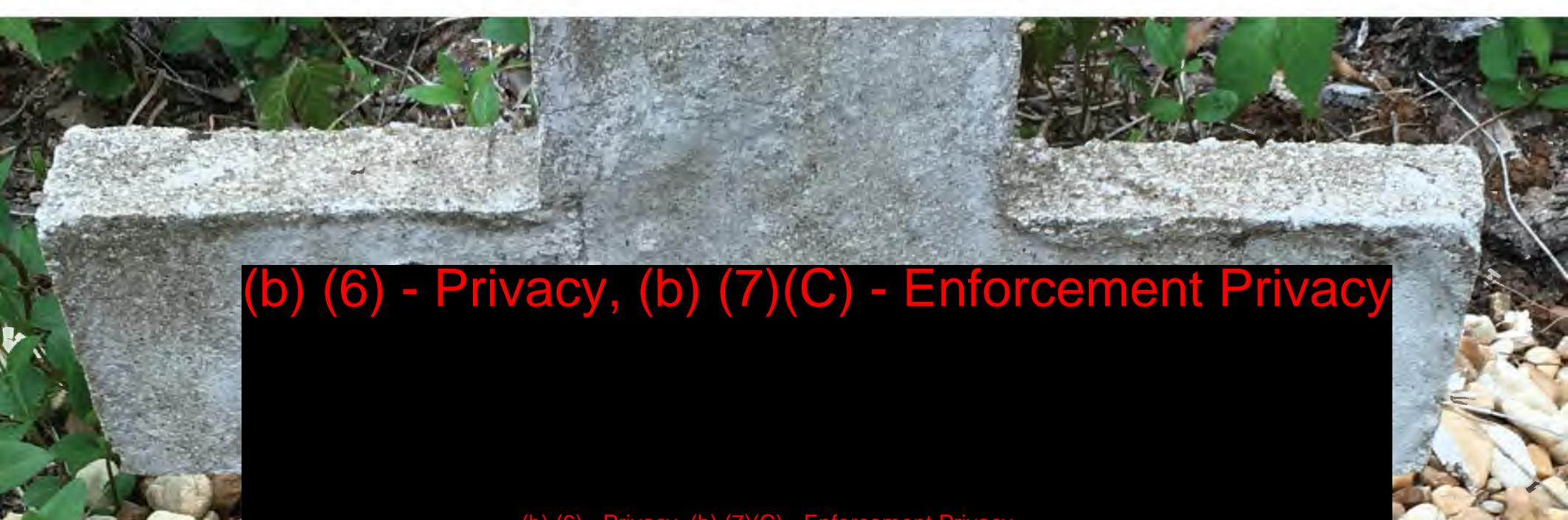
EXHIBIT 26



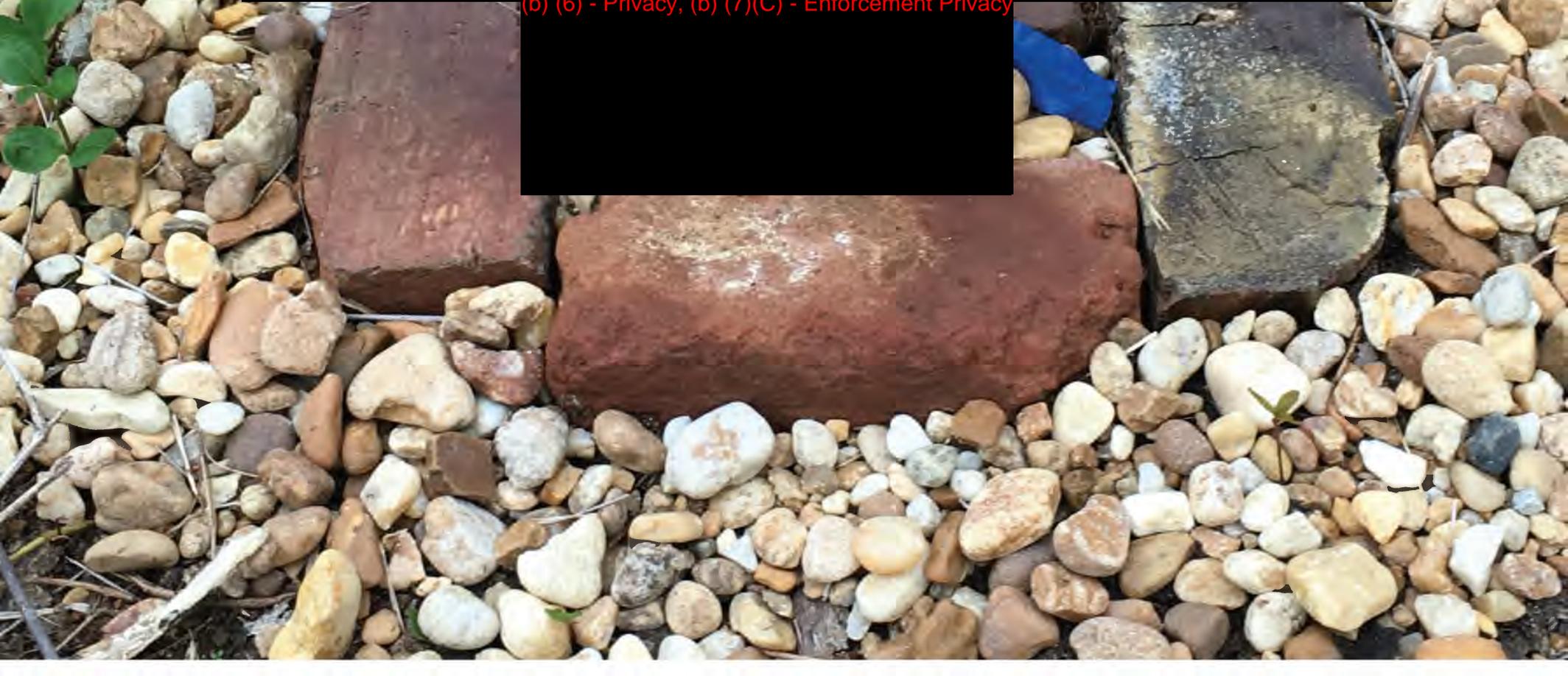
EXHIBIT 27



EXHIBIT 28



(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy



(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

EXHIBIT 29

A photograph of a concrete curb with a green stripe. A black redaction box covers the middle section of the curb. An orange flag is attached to a plant on the left side. The curb is surrounded by green plants and mulch. The foreground shows a concrete surface.

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

EXHIBIT 30



(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

EXHIBIT 31

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

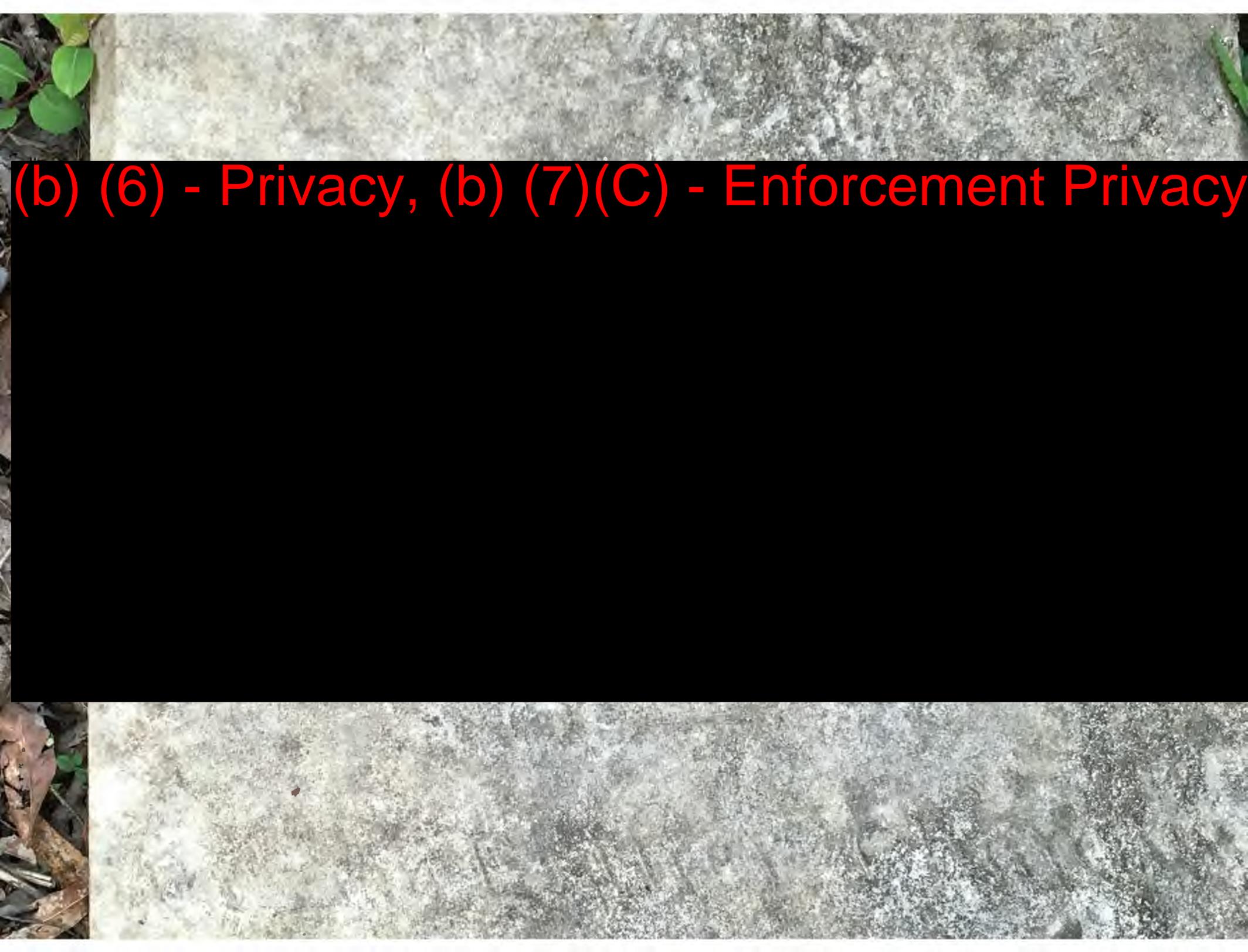
(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy



EXHIBIT 32



EXHIBIT 33



(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

EXHIBIT 34

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

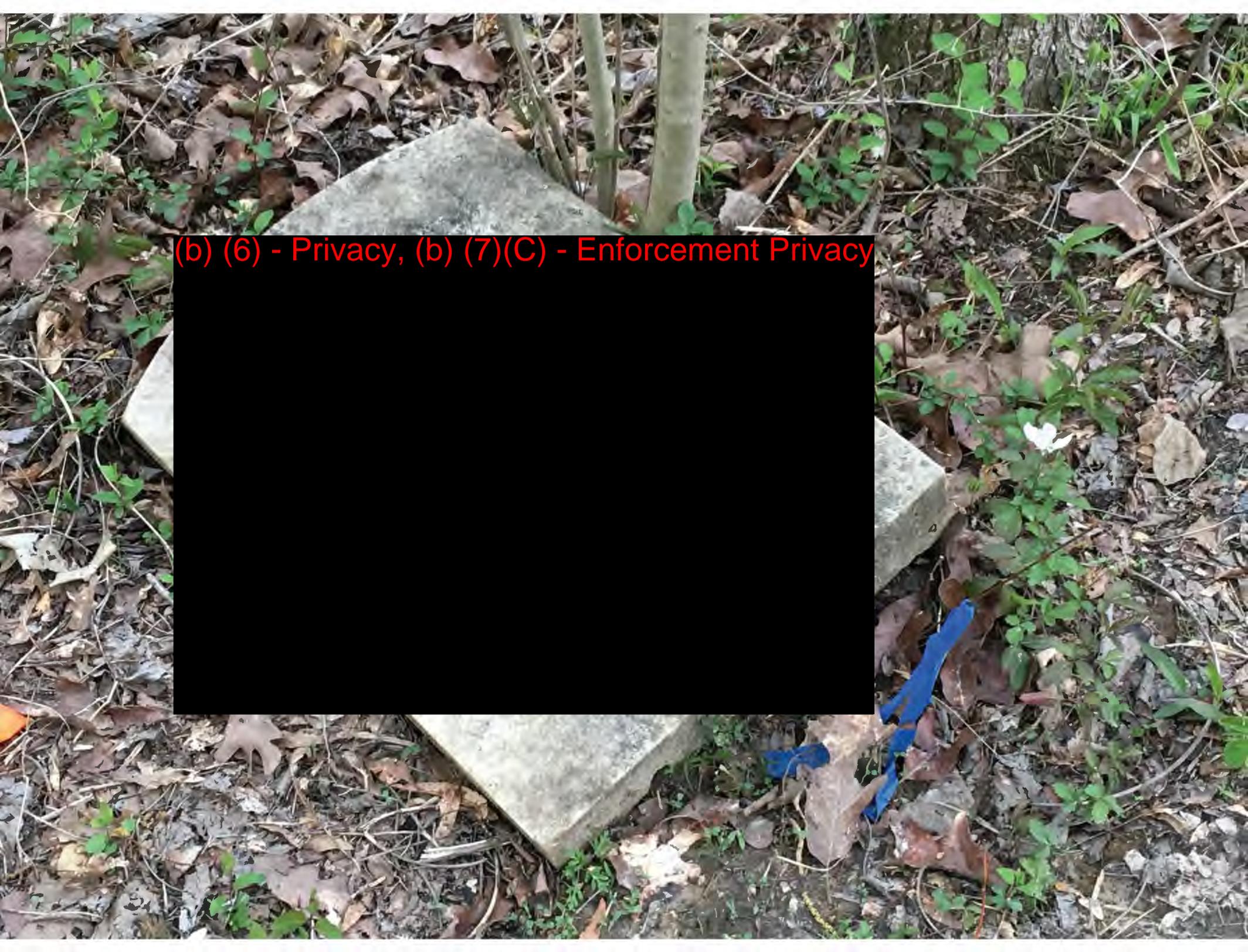
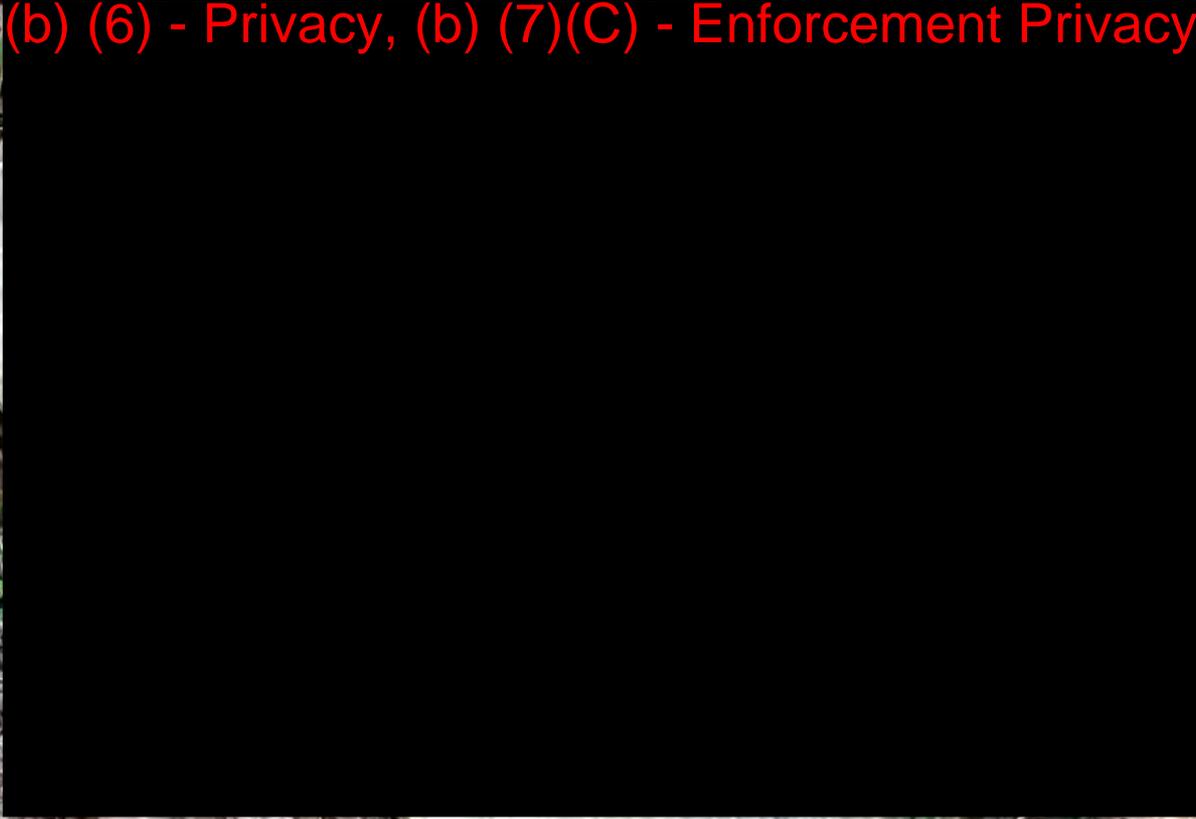


EXHIBIT 35



EXHIBIT 36

MICHAEL D. SMITH
CLAY STAGGS
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WRITER'S EMAIL:
MSMITH@SMITHSTAGGS.COM

November 18, 2015

(b) (6), (b) (7)(C)

(via email)

Re: New Hope Cemetery

Dear (b) (6), (b) (7)

I did not make any assumption regarding any ties between your Black Belt Citizens group and the cemetery. I do however know that you, your sister, (b) (6), (b) (7)(C) are the apparent officers and leaders of that group. Each of you was present at (or in the case of (b) (b) invited to) our last meeting and participated with some vigor. Facebook requires that organized groups with pages designate their administrators and only those administrators are allowed to post on behalf of the organization. My comments were directed toward you as individuals, not your group. Mr. Kaufmann took the time to come over and all present engaged in a lively debate and found common ground. That those of you present would:

- less than 24 hours after that meeting, condone using your group site to say that Green Group had condoned "trespassing and desecrating a black cemetery" and that "Arrowhead Landfill, continues to hurt, disrespect, neglect, violate, & exploit the community"; and
- after receiving our invitation to a follow up meeting, publish on November 13, 2015, that the "landfill is poisoning our homes and destroying our Black cemetery (sic)"

is shameful at best and downright factually deceitful. People outside your community continue to use you and you either cannot see it or are glad to serve as their pawns.

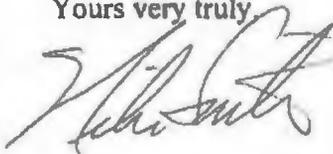
We conducted our community meeting as planned last night regarding the cemetery. At that meeting each of the four (4) prominent leaders of the group genuinely interested in New Hope Cemetery went out of their way to let Ernest and I know that neither you nor anyone else affiliated with your group represented them and that they appreciated our efforts and would continue to work with us to see that the cemetery is cleaned up, maintained and properly preserved. We will not abandon them nor anyone else more interested in serving the memory of their ancestors and culture than serving the agendas of strangers from outside Perry County.

(b)
November 18, 2015
Page 2

I hope that you found the information I provided with my email of October 30, 2015 to be helpful. As I told you in our last meeting and in that email, Green Group operates in an open and above board manner. Any and all required environmental testing results we have will be made available to you at your request. We would hope that you and those working with you would be so open. (b) (6) - Privacy, (b) (7)(C) - Enforcement promised to cooperate with us and provide her data and we agreed to work with her to develop (and pay for) a suitable testing protocol that would give comfort to the community concerning the operation and safety of Arrowhead Landfill. My numerous follow up telephone calls and emails to her went unanswered. (b) (6), (b) (7) has never offered up any independent test results to anyone, and none of the plaintiffs in the lawsuit brought alleging illegal pollution by a prior operator ever produced any such test results.

Finally, if the end game you seek is for Arrowhead Landfill to be closed or somehow be made to magically disappear, that will not happen. If you simply wish to be mad and tilt at windmills, that is your choice. If you want to enter into meaningful dialogue, be accurately informed regarding the landfill's operations, and work to see your community prosper as the result of a mutually respectful relationship with a company that wants to be a good corporate citizen, then choose to be part of a solution and let me know of your change of heart.

Yours very truly,



Michael D. Smith

MDS/



POINT TABLE		
NORTHING	EASTING	DESCRIPTION
878126.69	1976370.40	CENTER OF CHURCH
878113.95	1976268.84	0
878125.90	1976292.68	1
878129.61	1976293.76	2
878134.55	1976308.06	3
878116.87	1976330.91	4
878112.58	1976341.54	5
878116.01	1976345.17	6
878101.92	1976347.66	7
878101.05	1976331.02	M0
878137.93	1976300.58	8
878133.82	1976295.66	9
878121.30	1976287.93	M1

LEGEND OF SYMBOLS

- IRON PIN FOUND 1/2" REBAR
- GRAVE MARKER
- GRAVE
- PROPERTY LINE
- MONITORING WELL
- FENCE



MISCELLANEOUS NOTES

1 THIS DOCUMENT WAS CREATED ELECTRONICALLY. THIS MEDIA SHOULD NOT BE CONSIDERED A CERTIFIED DOCUMENT UNLESS IT HAS BEEN PROPERLY SEALED AND ORIGINALLY SIGNED BY A REGISTERED LAND SURVEYOR AT THE OFFICE OF WELLSTON ASSOCIATES LAND SURVEYORS, LLC AUTHORITY

Revisions
No. Date Description

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LAND SURVEYORS, LLC
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FAX: (205) 991-1100

WAX

EXHIBIT
FOR
ARROWHEAD LANDFILL
PERRY COUNTY
SEC. 28
T-17-N
R-6-E
ALABAMA

Project No.: 1002-007
Drawing No.: EXHIBIT
Drawn By: W.S.B.
Checked By: S.H.J.
R.L.S. No.:
Date: 6-24-15
Scale: 1"=60'

Sheet No.
1 of 1

Drawn By: W.S.B.
Date: 6/24/15
File Name: 1002007_CEN.dwg

EXHIBIT 37



(b) (6), (b) (7)(C)

EXHIBIT 38

(b) (6), (b) (7)(C)

